

EXECUTION

GROUND LEASE

between

DISTRICT OF COLUMBIA

as Landlord

and

700 PENN LLC,

as Tenant

Dated as of July 11, 2013

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GROUND LEASE

THIS GROUND LEASE (this “**Lease**”), dated as of July 11, 2013, is entered into by and between the DISTRICT OF COLUMBIA, a municipal corporation acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”), and 700 PENN LLC, a Delaware limited liability company (“**Tenant**”).

RECITALS:

A. Prior to the date of this Lease, District was the fee simple owner of the parcel of real property formerly known as assessment and taxation Lot 0801 in Square 0901, located near the intersection of Pennsylvania Avenue, S.E. and 7th Street, S.E. in Washington, D.C. (“**Original Property**”).

B. District and Stanton-Eastbanc LLC, a District of Columbia limited liability company (“**SEB**”), entered into a Land Disposition and Development Agreement, dated as of October 27, 2010, as amended by that certain First Amendment to Land Disposition and Development Agreement, dated as of November 14, 2011, and as further amended by that certain Second Amendment to Land Disposition and Development Agreement, dated as of July 10, 2013 (“**Second Amendment to LDDA**”) (collectively, the “**Agreement**”), pursuant to which District agreed to convey the Original Property to SEB in part via fee simple deed and in part via ground lease in accordance with the terms and conditions of this Lease and the Construction and Use Covenant, as applicable. SEB subsequently assigned its rights and obligations under the Agreement to Tenant.

C. Pursuant to D.C. Official Code § 10-801 (d-3) (2010 Supp.), the Hine Junior High School Disposition Approval Resolution of 2010 (R18-0555), as extended by the Hine Junior High School Disposition Extension Emergency Act of 2010 (A18-0678), the Council of the District of Columbia authorized the Mayor to convey the Original Property as contemplated in the foregoing Recital B.

D. In connection with the development of the Project Improvements (as defined below), SEB subdivided the Original Property into three separate assessment and taxation lots known as Lot 802 in Square 901 (“**North Parcel**”); Lot 803 in Square 901 (the “**New Street**”); and Lot 804 in Square 901 (the “**South Parcel**”). New Street, along with the South Parcel, collectively, are referred to herein as the “**Land**,” which is more particularly described in **Exhibit A** attached hereto and incorporated herein

E. Tenant desires to lease the Land from District, and District desires to lease the Land to Tenant, together with: (i) any and all improvements currently existing and located thereon, and the Project Improvements and Alterations constructed thereon during the term of this Lease; and (ii) all other appurtenances, rights, easements, rights-of-way, tenements and hereditaments now or hereinafter incident thereto, including all development rights and entitlements (all of the foregoing rights and interests are hereinafter sometimes referred to as the “**Leased Premises**”), all in accordance with the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and

valuable consideration, the receipt of which is hereby acknowledged, the District and Tenant hereby agree as follows:

ARTICLE 1 DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

Additional Rent shall have the meaning set forth in Section 4.2.

Affiliate means with respect to any Person (“first Person”) (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

Affordable Housing Covenant shall mean that Affordable Housing Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

Agreement shall have the meaning set forth in the Recitals.

Alterations shall have the meaning as described in Section 8.1.

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

Architect shall mean, for the Project Improvements, Escoff & Associates/Weinstein Studio, or another architect of record licensed to practice architecture in the District of Columbia and approved by District, and subsequently, other architects(s) of record, licensed to practice architecture in the District of Columbia, retained by Tenant for the Improvements.

Assignment and Assumption Agreement shall mean the agreement by and between the District and Tenant of even date herewith whereby Tenant assumed certain tenancies and licensees related to the Property.

Basic Rent shall have the meaning set forth in Section 4.1.

Basic Rent Calculation Model shall mean the model for determining Basic Rent attached hereto as Exhibit B.

Building Index shall have the meaning as defined in Section 12.8.2.

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

Casualty Restoration shall have the meaning as defined in Section 12.12.

Commencement Date shall mean July 11, 2013.

Commencement of Construction shall have the meaning ascribed to it in the Construction and Use Covenant.

Construction and Use Covenant means that certain Construction and Use Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

Construction Work shall mean any construction work performed after issuance of the Final Certificate of Completion of the Project Improvements under any provision of this Lease, including, without limitation, a Casualty Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Leased Premises.

Control means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners or Persons exercising similar authority with respect to the subject Person. The terms “**Control**,” “**Controlling**,” “**Controlled by**” or “**under common Control with**” shall have meanings correlative thereto.

CPI Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, 2008 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI Index shall be discontinued, District shall select a substitute index being an existing official index published by the Bureau of Labor Statistics or its successors or another, similar governmental agency, which index is most nearly equivalent to the CPI Index.

DDOT’s Standards and Guidelines shall mean rules, regulations, manuals, guidances, or other publications by DDOT and the American Association of State Highway and Transportation Officials (AASHTO), setting forth standards, guidelines, or other requirements for the construction of or the impact of construction upon streets, highways, and related facilities, including the Design & Engineering Manual, the Standard Specifications for Highways & Structures, the Temporary Traffic Control Manual & Work Zone Pocket Guide, the DDOT CAD Standards Manual and MicroStation V8 Workspace, the Environmental Policy and Process Manual, the FHWA Manual on Uniform Traffic Control Devices (MUTCD), the Policy for Access to the District of Columbia Freeway and Interstate System, and the DDOT Right-of-Way Manual.

“District-Utility Easements” means the easements and covenants in form reasonably acceptable to Tenant and any other parties thereto that are required to develop and operate the Project Improvements in accordance with the Final PUD Order, including, without limitation, all covenants and easements by (i) emergency service providers; (ii) public utilities; (iii) perpetual and irrevocable easements within the Land necessary for access to, and ingress and egress over, under and across New Street and the Land for the provision of access to pedestrians; installation, maintenance, repair or replacement of public utilities or street lights; provision of access to emergency vehicles; and (iv) to provide access by all lawful governmental or private emergency

services to New Street and the Land, including, without limitation to, its owners, occupants, invitees and users; and (v) as otherwise required by Applicable Law.

Default shall mean any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

Default Notice shall have the meaning set forth in Section 9.1(b).

Default Rate means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law.

Designee shall mean any Person (including, without limitation, an Affiliate of a Leasehold Mortgagee) that is not a Prohibited Person or an Affiliate of Tenant and that is the designee or nominee of a Leasehold Mortgagee for the purposes of a Foreclosure Transfer.

District shall mean the District of Columbia, a public body, municipal and corporate.

District Indemnified Parties shall mean, collectively, the District, including, without limitation, any agencies, instrumentalities and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, employees (including contract employees), assigns, and Affiliates of any of them.

Eighth Street Residential Component shall mean the South Building identified on the PUD Order which will contain a minimum of eighty-two (82) residential units, including eight (8) affordable units.

Environmental Condition shall mean any condition during the Lease Term, on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of the Project or that of any other property in the vicinity of the Leased Premises or any activity or operation formerly conducted by any Person on or off the Leased Premises.

Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the remediation or mitigation of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

Environmental Laws means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise) 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.

Equity Interest shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

Event of Default shall have the meaning set forth in Section 9.1.

Expiration Date shall have the meaning set forth in Section 3.1.

Fee Parcel shall have the meaning set forth in the Recitals.

FAR shall mean Floor Area Ratio, as such term is defined in the District of Columbia Zoning Regulations.

Final Certificate of Completion is that certificate issued by the District pursuant to the Construction and Use Covenant.

“Finance Closing” shall mean the closing on the debt and equity funding necessary for Tenant to construct the Project Improvements and fund the costs set forth in the Final Project Budget and Funding Plan.

Final Project Budget and Funding Plan shall have the meaning ascribed to it in the Construction and Use Covenant.

“Final PUD Order” means the PUD Order after all appeal periods with respect thereto shall have expired without appeal or contest having been filed (or, if any appeal or contest was

filed, such appeal or contest shall have been successfully discharged or settled confirming the validity of such approval without the imposition of any changes or additional terms and conditions.

“Force Majeure” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation; strike, lockout, 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 Commencement Date; delays, despite reasonable business efforts in obtaining approval from, or changes ordered by, any Governmental Authority; so long as such act or event: (i) is not within the reasonable control of Tenant, Tenant’s Agents, or its Members; (ii) is not due to the fault or negligence of Tenant, Tenant’s Agents, or its Members; (iii) the effect of which is not reasonably avoidable by Tenant, Tenant’s Agents, or its Members or District in the event District’s claim is based on a Force Majeure event, and (iv) directly results in a delay in performance by Tenant or District, as applicable; but specifically excluding: (A) a Funding Shortage; (B) the acts or omissions of a general contractor, its subcontractors, or any of Tenant’s Agents or Members; or (C) failure by Tenant to obtain the Final PUD Order by the applicable Outside Date set forth on the Milestone Schedule.

Foreclosure Transfer shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Leasehold Mortgage, or any transfer, sale or assignment of any or all of the Leasehold Estate, or any other transfer, sale or assignment of all or any part of the Leasehold Estate by judicial or other proceedings under, or pursuant or pertaining to a Leasehold Mortgage, or by virtue of the exercise of any power or right contained in a Leasehold Mortgage, or by assignment or other conveyance-in-lieu of foreclosure or other action in enforcement of a Leasehold Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Tenant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant by virtue of, or pursuant to, any right or power contained in a Leasehold Mortgage or in any other document or instrument evidencing or securing a loan secured by a Leasehold Mortgage, or by deed, assignment or other conveyance of some or all of such Equity Interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the Parties that the term **“Foreclosure Transfer”** shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Leasehold Estate, some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant following an uncured default under a Leasehold Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Leasehold Mortgage)): (x) to a Leasehold Mortgagee or its Designee or Foreclosure Transferee; or (y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant from a Leasehold Mortgagee after such Leasehold Mortgagee has

purchased or otherwise acquired some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant in a Foreclosure Transfer described in the immediately preceding clause (x).

Foreclosure Transferee shall mean (x) any Person (including, where appropriate and without limitation, a Leasehold Mortgagee) that is not a Prohibited Person and that acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant pursuant to a Foreclosure Transfer, or (y) any Person not already described in the immediately preceding clause (x) that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate or some or all of the Equity Interests in Tenant as a result of any action whatsoever in enforcement (or in lieu thereof) of any power or right granted by, or existing under, a Leasehold Mortgage.

Funding Shortage shall occur if Tenant provides written evidence that it has sought financing from no fewer than five (5) Institutional Lenders and, despite using commercially reasonable business efforts, none of the Institutional Lenders are able and willing to fund a real estate project of the type and magnitude of the Project Improvements at an interest rate of no more than eight percent (8%), with a loan to cost ratio of at least 50%, and upon other commercially reasonable terms (including commercially reasonable loan security and collateral, which may include a guaranty of completion). The individual financial condition of Tenant shall not be considered when determining whether a Funding Shortage has occurred; the assumed financial status of Tenant shall be that of a regional or national developer with the financial status (including assets, debts, and equity) capable of developing the Project Improvements upon the terms and conditions set forth in the Construction and Use Covenant.

Governmental Authority shall mean any national, federal, state, local or other government or political subdivision of any of the foregoing, or any agency, authority, board, bureau, commission, department or instrumentality thereof, or any court, tribunal, grand jury or arbitrator.

Hazardous Materials means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or toxicity characteristic leaching procedure 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 Leased Premises or hazardous to health or the environment.

Imposition or Impositions shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant or restriction affecting the Leased Premises: (1) real property taxes and general and special assessments (including,

without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property taxes; (3) water, water meter and sewer rents, rates and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; (9) fees, assessments or charges payable by District or Tenant under any lien, encumbrance, covenant or restriction affecting the Leased Premises; and (10) any fines, penalties and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

Improvement(s) shall mean any building (including footings and foundations) and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Land (whether temporary or permanent), including, but not limited to, the Project Improvements, and any and all Alterations and replacements thereof, additions thereto and substitutions therefor.

Institutional Lender shall mean a Person that is not an Affiliate of Tenant or a Prohibited Person and is, at the time it first makes a loan to Tenant, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a "REMIC" under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees' welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than \$250 million in assets (calculated in 2010 dollars); (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least \$250 million (calculated in 2010 dollars); (xiv) a charitable organization regularly engaged in making loans secured by real estate; or (xv) any other lender regularly engaged in making loans secured by real

estate or interests in entities owning real estate having in the aggregate no less than \$250 million in assets (calculated in 2010 dollars).

Land shall have the meaning set forth in the Recitals.

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

Lease shall mean this Ground Lease between the District and Tenant. Lease Term shall have the meaning set forth in Section 3.1.

Leased Premises shall have the meaning set forth in the Recitals.

Leasehold Estate shall mean Tenant's interest in this Lease and the Project Improvements constructed on the Land.

Leasehold Mortgage shall mean any mortgage, deed of trust or other similar security instrument, (including all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof) made for the benefit of an Institutional Lender in accordance with the terms and provisions of this Lease that secures a loan made to Tenant by a Leasehold Mortgagee and constitutes a lien on the Leasehold Estate.

Leasehold Mortgagee shall mean an Institutional Lender who owns, holds or controls a Leasehold Mortgage.

Local Retail Requirement shall mean the requirement that Tenant reserve (a) a minimum of twenty percent (20%) of the Project retail FAR square footage for "non-national tenants" at such rents as Tenant and such tenants shall agree; and (b) a minimum of 1000 square feet of the Project retail square footage for unique small retailers that are located only at the Project, at rents that are equal to or less than 75% of market rents. The Local Retail may be further defined in the Retail Plan; provided, however, (i) that in the event the Final PUD Order or other applicable law or regulation places a limit on any category or categories of retail use, Tenant may request a reduction in the Local Retail Requirement, which the District may grant or deny in its sole but reasonable discretion; and (ii) the child development center as referenced in the PUD Order shall not count toward the Local Retail Requirement. "Non-national tenant" means a retail tenant with fewer than six (6) locations operating under the same name and ownership and the owner's principal place of business is within the Washington, D.C. metropolitan area.

Member shall mean any Person with an ownership interest in Tenant.

Milestone Schedule shall have the meaning ascribed to it in the Construction and Use Covenant.

Negotiation Period shall have the meaning set forth in Section 16.23(b).

Net Insurance Proceeds shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

New Street shall have the meaning set forth in the Recitals.

Notice shall have the meaning set forth in Section 16.8.

Open Space Management Plan shall mean a plan presented to and approved by the District prior to Commencement of Construction and once every five years thereafter outlining how the open space encompassing New Street plus the public plaza will be managed for the coming five year period. The plan shall include, at a minimum:

- (i) the specific goals for activating the Open Space with markets, outdoor retailers, and special events;
- (ii) the management structure;
- (iii) a proposed budget for managing and maintaining the street and the public plaza; and
- (iv) a timeline for commencing the weekend markets.

Operating Agreement means that certain Operating Agreement by the Member of Tenant dated July 11, 2013, which has been reviewed and approved by District prior to the Commencement Date.

Parties shall mean the District and Tenant.

Permitted Materials means any Hazardous Materials that are reasonably and customarily required for the conduct of Tenant's operation of the Leased Premises as a use permitted under this Lease.

Permitted Uses shall mean any use for which the Land may be legally used in accordance with the Final PUD Order.

Person shall mean any individual, limited liability company, partnership, corporation, association, business, trust, or other entity.

Plaza Residential Component shall mean the Plaza Building identified on the PUD Order which will contain a minimum of forty-two (42) residential units, including four (4) affordable units.

Price Notice shall have the meaning set forth in Section 16.23(a).

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 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 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; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Person suspended or debarred by HUD or by the District of Columbia government; or (F) any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

Prohibited Uses means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.

Project Improvements means those improvements constructed on the Land pursuant to the Construction and Use Covenant.

"PUD Order" means the planned unit development for the Project, as approved by the Zoning Commission of the District of Columbia as Zoning Commission Order No. 11-24 on October 15, 2012, published on March 8, 2013, inclusive of all exhibits and plans attached thereto published on the DC Office of Zoning Interactive Zoning Information System at <http://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx>, inclusive of any supplemental orders that may be issued by the Zoning Commission. No Material Change to the PUD Order may occur without the prior written consent of District in accordance with the terms of the Construction and Use Covenant.

Release shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

Replacement Value shall have the meaning as defined in Section 12.8.1.

Rent shall mean the Basic Rent and the Additional Rent.

Residential Components shall mean the Eighth Street Residential Component and the Plaza Residential Component.

Response Period shall have the meaning set forth in Section 16.23(a).

Restricted Period shall mean with respect to the Project, or any portion thereof, that period of time beginning on the Commencement Date and ending upon issuance of the Final

Certificate of Completion; provided, however, the Restricted Period with respect to the retail portion of the Project shall end on the Stabilization Date.

Retail Plan shall mean the retail marketing plan and retail strategy to satisfy the Local Retail Requirement that was submitted by Tenant and approved by District prior to the Commencement Date and any modifications thereto reviewed and approved by District.

Sales Notice shall have the meaning set forth in Section 16.23(a).

Significant Alteration shall mean any Alteration (or series of related Alterations) that (i) changes the exterior design or the massing of the Improvements; (ii) changes or modifies the structural integrity of the Improvements; (iii) a change in the use of forty percent (40%) or more of the FAR square footage of the Leased Premises; or (iv) materially changes the quality of material or finishes used in the Improvements to such an extent that they are no longer considered Class A Improvements.

Stabilization Date shall mean, following issuance of the Final Certificate of Completion, the first day on which at least eighty percent (80%) of the net rentable square feet of the retail portion of the Project Improvements and one-hundred percent (100%) of the net rentable square feet used to satisfy the Local Retail Requirement have been leased.

South Parcel shall have the meaning set forth in the Recitals.

Sublease shall mean any sublease of a portion of the Improvements in the ordinary course of business, and any subsequent amendments, modifications or extensions thereto, which sublease shall (a) contain or incorporate all of the terms, conditions and provisions of this Lease and (b) be subject and subordinate to this Lease.

Tenant means 700 PENN LLC, a Delaware limited liability company, and its successors and authorized assigns under this Lease.

Tenant Agents mean the Tenant's agents, employees, consultants, contractors, and representatives.

Tenant's Price shall have the meaning set forth in Section 16.23(a).

Transferee means purchaser, assignee, transferee or sublessee as a result of a Transfer.

Transfer means any sale, assignment, conveyance, lease, sublease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same. As used in this Lease, a Transfer shall also be deemed to have occurred if: (i) in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Tenant held by any Member or (ii) there is a change in

Control of Tenant or a change in Control of any Member from that existing as of the Commencement Date. Notwithstanding anything to the contrary contained in this Lease, the term "Transfer" shall not be deemed to include (a) transfers pursuant to a Sublease, (b) transfers to an Affiliate of Tenant, (c) transfers to a Permitted Mortgagee or a Foreclosure Transfer, (d) sales of residential condominium units, or (e) transfers of common areas associated with the sale of condominium units to a condominium association; provided, however, during the period commencing on the Commencement Date through the Finance Closing, Tenant shall not effect a Transfer under the foregoing clauses (a) through (e) of this paragraph without District's consent in accordance with Section 10.1.3.

ARTICLE 2 LEASE OF LEASED PREMISES

2.1 Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District, the District hereby grants, demises, and lets to Tenant, and Tenant hereby takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises to have and to hold for and during the Lease Term.

2.2 Use.

2.2.1 *Continuous Legal Use*. Throughout the Lease Term, Tenant shall use and operate the Leased Premises as required by the terms of this Lease and the applicable certificate(s) of occupancy for the Improvements, as may be amended from time to time.

2.2.2 *Scope of Use for the Leased Premises*. Prior to issuance of the Final Certificate of Completion, Tenant shall use the Leased Premises in accordance with the Construction and Use Covenant. Tenant shall, from and after issuance of the Final Certificate of Completion, actively and continuously use and operate the Leased Premises for the Permitted Uses. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to any portion of the Leased Premises in connection with Alterations or repairs related to Casualty Restoration, or condemnation or maintenance work, in each case undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

2.3 Prohibited Uses.

2.3.1 Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any party thereof to be used or occupied, for any of the following ("**Prohibited Uses**"):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) any illegal gambling;
- (iii) for any use which is a public nuisance;
- (iv) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises; or

(v) any use inconsistent with Section 2.2.

2.3.2 Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees or concessionaires, subject to Applicable Laws.

2.4 Quiet Enjoyment. Except during the continuance of a Default, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person lawfully claiming through or under the District.

ARTICLE 3 TERM

3.1 Term of Lease.

(a) Except as otherwise provided in Section 3.1(b), the term of this Lease (the “**Lease Term**”) shall commence on the Commencement Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the July 11, 2112 (the “**Expiration Date**”) or (ii) the effective time of a termination in accordance with Section 3.2. On the Commencement Date, the District shall deliver possession of the Leased Premises to Tenant.

(b) The term of this Lease with respect to the Residential Components is renewable for additional ninety-nine (99) year terms in accordance with D.C. Official Code §42-1902.29, as may be amended from time to time; provided, however, Tenant shall not have the right to exercise such right unless Tenant has elected to sell the residential units in either or both of the Residential Components as condominiums to individuals for such individuals to reside in such condominium units. Tenant’s imposition of a residential condominium regime on the Residential Components is subject to the District’s approval, pursuant to Section 10.8 of this Lease. If, at the time Tenant elects to sell the units in the Residential Component(s) as condominiums, and this Lease has not theretofore been amended and restated into a separate lease for the Residential Component(s), District and Tenant may execute an amended and restated lease with respect to such Residential Component, which shall include such right to renew for additional ninety-nine (99) year terms.

3.2 Early Termination. The Lease Term shall terminate prior to the Expiration Date upon the occurrence of (i) the written agreement of the Parties to terminate this Lease, or (ii) the termination of this Lease in accordance with the provisions hereof (including, without limitation to, termination under Section 9.1(ii) of this Lease).

3.3 Return of Leased Premises. Upon the Expiration Date or in the event of earlier termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to the District.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after expiration of the Lease Term, Tenant or such Person shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Basic Rent in an annual amount equal to ten percent (10%) of the then appraised value of the fee interest in the Land, as reasonably determined by the District, based on the highest and best use for the Land at the time of any such

holdover. Tenant shall pay as Additional Rent any costs and expenses of an appraisal incurred by the District in connection with this Section 3.4. Tenant shall indemnify the District Indemnified Parties and hold them harmless from and against all liabilities, damages, obligations, losses and expenses sustained or incurred by them by reason of such retention of possession of the Leased Premises by Tenant or such Person, except to the extent the same is the result of or arises directly out of the gross negligence or intentional misconduct of the District Indemnified Parties. If the retention of possession of the Leased Premises is with the written consent of the District, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by the District of any re-entry rights or remedies of the District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or of the breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if the District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease Term or any extension thereof, the District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

ARTICLE 4 RENT AND IMPOSITIONS

4.1 Basic Rent.

(a) Subject to Section 4.1(b) through (e) below, annual ground rent (“**Basic Rent**”) shall equal \$222,389. Basic Rent shall be payable in advance and in equal quarterly installments on the September 15th, December 15th, March 15th, and June 15th of each year. The first quarterly installment shall be due on or before September 15, 2013.

(b) Notwithstanding anything to the contrary contained in this Lease, Basic Rent shall be partially abated for thirty-nine (39) months following the Commencement of Construction of the Improvements as follows:

- (i) Commencing on the first quarterly payment after Tenant achieves Commencement of Construction and continuing through the eighth (8th) quarterly installment thereafter, Tenant shall pay six and quarter percent (6.25%) of Basic Rent per quarter.
- (ii) Commencing on the ninth (9th) quarterly payment after the Tenant achieves Commencement of Construction and continuing through the twelfth (12) quarterly installment after the date that Tenant achieves Commencement of Construction, Tenant shall pay twelve and half percent (12.5%) of Basic Rent per quarter.

(c) Not more than thirty (30) and not less than ten (10) days prior to the Finance Closing (as defined in the Construction and Use Covenant), Basic Rent shall be recalculated utilizing the Basic Rent Calculation Model and the Final Project Budget and Funding Plan. In the event any installment of Basic Rent commences or is adjusted effective as of any day other than the fifteenth day of a calendar quarter, the Basic Rent due for such full calendar quarter

shall be prorated on the basis of a 90-day quarter to account for such commencement or adjustment in the middle of the calendar quarter.

(d) Prior to the issuance of the Final Certificate of Completion, the close-out of the construction, design and engineering contracts for the Improvements, and the final determination of all actual Hard Costs, the Parties shall re-calculate the Basic Rent by inputting the actual Costs (as such term is defined in **Exhibit B**) incurred by Tenant into the Basic Rent Calculation Model. If the Basic Rent Calculation Model result in an increases or decreases from the previously agreed upon Basic Rent by 5%, Basic Rent shall be amended to reflect the newly calculated amount.

(e) If at any time during the term of this Lease Tenant is no longer renting, or holding available for rent, at least 2400 square feet of at grade space in the Project for a child development center serving no fewer than twenty-four (24) children under the age of three (3) at the subsidized rental rate required under the PUD Order, Basic Rent shall be recalculated utilizing the Basic Rent Calculation Model without including the subsidized day care rent and tenant improvement allowance in the calculation of Unanticipated Proffers (as such term is defined in the Basic Rent Calculation Model).

(f) In the event that the recalculation of the Basic Rent under this Section 4.1 results in a change in the amount of Basic Rent, the Parties shall execute an amendment to this Lease reflecting the newly calculated Basic Rent.

4.2 Additional Rent. From and after the Commencement Date, and throughout the Term, Tenant shall also pay as additional rent (“**Additional Rent**”) all sums, costs, expenses and other payments payable or dischargeable by Tenant under this Lease, including, without limitation, all Impositions.

4.3 No Offsets or Deductions. Except as expressly provided in Section 4.1(b) above, it is intended that the Rent payable throughout the Lease Term shall be an absolute net return to District, without offset or deduction and free of any loss, cost, expense, charges, diminution or other deductions whatsoever, and all costs, expenses and obligations of every kind and nature with respect to the Leased Premises shall be the sole and absolute responsibility of Tenant.

4.4 Manner of Payment.

(a) Rent and all other amounts payable by Tenant under this Lease to District as landlord shall be paid in legal tender of the United States of America by, at the election of District, as applicable, with reasonable prior notice to Tenant, wire transfer or check drawn on a United States bank payable to D.C. Treasurer, to:

Agency Fiscal Officer
Economic Development and Regulation Cluster
Government of the District of Columbia
Office of the Chief Financial Officer
1100 4th Street, SW - Suite 5156
Washington, DC 20024

(b) District may designate an alternative address for the delivery of rent from time to time by notice to Tenant.

(c) The District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall excuse a delay in payment by Tenant on a subsequent occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and other Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.5 Late Charge. If Tenant fails to make any payment of Rent on or before the date such payment is due and payable, then District shall have the right to impose upon Tenant a late charge of five percent (5%) of the amount of such payment. Any payment due to the District hereunder which is not made when due shall bear interest from the date due to the date paid at the Default Rate.

4.6 Payment of Impositions.

4.6.1 *Obligation to Pay Impositions*. From and after the Commencement Date, Tenant shall pay, in the manner provided in Section 4.6.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, the Land or the Leased Premises with respect to (i) the Land, or (ii) the Leased Premises, or (iii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iv) any other appurtenances of the Leased Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, or (vi) the use and occupancy of the Leased Premises, or (vii) the activities and/or the transactions contemplated by this Lease.

4.6.2 *Payment of Impositions*. Tenant shall arrange to be separately billed for, and shall pay the Impositions to the applicable Governmental Authority assessing or imposing such Imposition. Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

4.6.3 *Evidence of Payment*. Tenant shall furnish to the District, within ten (10) days after the date of the District's request therefor, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the Imposition.

4.6.4 *Evidence of Non-Payment*. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to the District.

4.6.5 *Survival*. The provisions of this Section 4.6 shall survive the expiration of the Lease Term, until any Imposition that may be due and owing under this Lease has been paid in full.

4.6.6 *Contest of Impositions*. Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may

be postponed, to the extent permitted by Applicable Laws, if, and only as long as: (i) such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies the District in writing of any such contest relating to any Imposition which is payable to the District, including but not limited to any District taxes; and (ii) neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of the District, in danger of being forfeited to a Governmental Authority. Upon request by Tenant, District shall execute, as fee owner, such papers as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest by the applicable Governmental Authority imposing such Imposition, provided that District shall not be subject to any cost or liability as a result thereof.

ARTICLE 5 APPLICABLE LAWS

5.1 Compliance with Applicable Laws. During the Lease Term, Tenant shall comply with all Applicable Laws (including, without limitation, Environmental Laws). Without limiting the generality of the foregoing:

(i) Tenant shall maintain and comply with all permits, licenses and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance and repair of the Leased Premises or any part thereof.

(ii) Neither Tenant nor any Tenant Agents shall use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Leased Premises, except that Tenant may use, store, handle, transport and dispose of Permitted Materials. Tenant shall promptly notify the District, and provide copies promptly after receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance or non-compliance with Applicable Laws at the Leased Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Leased Premises by Tenant or a Tenant Agents; provided, however, that the District's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon the District to respond thereto. To the extent required by Applicable Laws, Tenant shall, at its sole cost and subject in all respects to the prior written notification to the District thereof, promptly clean up, remove and otherwise fully remediate, in compliance with all Applicable Laws, any Hazardous Materials (other than Permitted Materials) situated in, on, or under the Leased Premises.

(iii) If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article 9 of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District in connection therewith shall be paid by Tenant. If the District elects to cause the necessary cleanup, removal or other remedial work to be performed as provided above, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and for damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

(iv) Upon the expiration or sooner termination of this Lease or Tenant's vacation of the Leased Premises, Tenant shall, at its sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Laws, all Permitted Materials (including, without limitation, the performance of any necessary investigatory, monitoring,

cleanup, removal or other remedial work), all of which remediation shall be subject to the prior written notification to the District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article 9 of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District, in connection therewith, plus interest at the Default Rate from the date incurred by the District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

5.2 Right to Contest. Tenant shall have the right, after prior notice to the District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Laws affecting the Leased Premises. Upon request by Tenant, District shall execute such papers, as fee owner, as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest, provided that District shall not be subject to any cost or liability as a result thereof. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject the District or Tenant to any criminal liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect and hold the District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, the District represents and warrants to the Tenant, as of the Commencement Date, as follows:

(i) The District has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(ii) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which the District is a party or by which it or any of its properties or assets are bound.

(iii) The District is the sole fee owner of the Land.

(iv) There exists no lease, license, assignment, sublease or other transfer of any portion of the Land other than those leases and licenses assigned by District to Tenant pursuant to the Assignment and Assumption Agreement.

(v) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by the District or on the District's behalf.

(vi) This Lease has been duly executed and delivered by District and, when duly executed and delivered by the Tenant, shall constitute a legal, valid and binding obligation of District enforceable against District in accordance with its terms.

(vii) Except with respect to pending appeals in the matters of (a) *Christopher Howell, et al., v. District of Columbia Zoning Commission and Stanton-EastBanc LLC, et al.,*

Case No. 13-AA-366 through 13-AA-378 (D.C. Ct. of Appeals), and (b) *Bobbie Krengel v. District of Columbia Zoning Commission and Stanton-EastBanc LLC, et al.*, Case No. 13-AA-487 (D.C. Ct. of Appeals) (collectively, the “**Pending PUD Appeal**”), there is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against District which, if decided adversely to District, would impair District’s ability to enter into and perform its obligations under this Lease.

(viii) No Person other than Tenant has a right to lease all or any portion of the Leased Premises.

(ix) There is no condemnation proceeding pending or, to District’s knowledge, threatened, involving the Leased Premises.

6.2 Tenant’s Representations and Warranties. As an inducement to the District to enter into this Lease, Tenant represents and warrants to the District, as of the Commencement Date, as follows:

(i) Tenant is a limited liability company duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in the District of Columbia. True, correct and complete copies of the articles of organization of Tenant have been certified and delivered to the District on or before the Commencement Date.

(ii) Tenant has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(iii) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by the District, shall constitute a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(iv) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which Tenant is a party or by which it or any of its properties or assets are bound.

(v) The lease of the Leased Premises by Tenant, and Tenant’s other undertakings pursuant to this Lease are and will be used for the purpose of developing and operating the Project Improvements, and not for speculation in land holding or any other purpose.

(vi) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(vii) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder’s or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant’s behalf.

(viii) Neither Tenant nor any of its Members, or the constituent Members of 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.

(ix) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(x) Except with respect to the Pending PUD Appeal, there is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members: (i) would impair Tenant's ability to enter into and perform its obligations under this Lease; (ii) would materially adversely affect the financial condition or operations of Tenant or its Members; or (iii) the legal existence of Tenant.

6.3 "As Is, Where Is" Lease. Tenant acknowledges that the lease by the District to Tenant of the Leased Premises pursuant to the terms of this Lease is on an "AS-IS, WHERE-IS" basis. The District makes no representation or warranty, either express or implied, as to: (i) the condition of the Leased Premises, including, but not limited to, the presence or absence of Hazardous Materials at, in, on or under the Leased Premises; (ii) the suitability or fitness of the Leased Premises for any use, or (iii) any Environmental Law, other law or any other matter affecting the use, occupancy or enjoyment of the Leased Premises. By executing this Lease, Tenant shall be deemed to have acknowledged to the District that Tenant has conducted such inspections and tests of the Leased Premises as Tenant deems appropriate and that Tenant is thoroughly acquainted and satisfied with all respects thereof and is leasing the Leased Premises "AS-IS, WHERE-IS". Tenant's acceptance of possession of the Leased Premises pursuant to this Lease shall constitute a waiver and release of the District from any claim or liability pertaining to the condition of the Leased Premises including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

ARTICLE 7
**TENANT COVENANTS: CONSTRUCTION OF PROJECT IMPROVEMENTS;
MAINTENANCE AND REPAIR; UTILITIES**

7.1 Tenant's Affirmative Covenants Specified. Throughout the Term and at the sole cost and expense of Tenant, Tenant covenants to:

(i) preserve and keep in full force and effect its existence, franchise, and rights and privileges under (i) the laws of the District of Columbia so as to have and retain the right to lease the Premises, own and operate the Improvements and transact business in the District of Columbia and (ii) the laws of the State in which Tenant is organized;

(ii) use and occupy the Premises and the Project Improvements pursuant to the terms of this Lease;

(iii) observe and comply in all material respects with the terms and conditions of this Lease and the Construction Covenant until the District's issuance of a Final Certificate of Completion for the Project Improvements in accordance with the Construction Covenant and the recordation of same among the Land Records, including, without limitation to, the construction of the Project Improvements with first-class quality materials and in a first-class and diligent manner, in compliance with Applicable laws and the highest applicable industry standards;

(iv) observe and comply with the terms and conditions of the Construction Covenant and the Affordable Housing Covenant, and all other instruments now recorded or hereafter recorded with Tenant's consent in the Land Records and affecting the Leased Premises or Project Improvements or the use thereof, so far as the same shall at any time during the Term be in force and effect;

(v) conform to, comply with, and take any and all action necessary to avoid or eliminate any violation of, any Applicable Laws which shall be applicable to the Leased Premises, Project Improvements or the vault space, sidewalks, curbs, driveways and

passageways and parking areas comprising part of the Leased Premises or the Project Improvements, or to the use or manner of use thereof, whether or not such Applicable Law shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Leased Premises or the Project Improvements;

(vi) observe and comply with the requirements of all policies of insurance which Tenant is required hereby to maintain with respect to the Leased Premises and the Project Improvements;

(vii) procure and maintain all permits, licenses and authorizations required for any use made of the Leased Premises and the Project Improvements (including, without limitation, required for the construction of the Project Improvements and any Alterations), or any part thereof, then being made, and for the lawful and proper operation and maintenance thereof;

(viii) pay when due the entire cost of any work on the Leased Premises or Project Improvements, including, without limitation, the construction of the Project Improvements and all equipment, facilities, signs and fixtures therein, and the performance of all Alterations; to procure all necessary permits before undertaking any such work; to perform such work in a good and workmanlike manner, employing materials of good quality; and to comply with all Applicable Laws;

(ix) except as expressly set forth in this Lease, remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence, granted by District to Tenant or to any assignee or subtenant thereof. Furthermore, Tenant shall not be entitled to any defense to its obligation to construct the Project Improvements (or any part thereof) pursuant to the terms of this Lease based on the failure of any other Person to construct any other improvements within the Leased Premises, nor will Tenant be entitled to any such defense based on any other Person failing to give access to any land or premises to Tenant, notwithstanding that such access may be necessary in order for Tenant to construct the Project Improvements in accordance with this Lease, and Tenant expressly waives any such defenses;

(x) comply with the Local Retail Requirement;

(xi) construct New Street in accordance with the Final PUD Order and DDOT's Standards and Guidelines, as may be modified by the District of Columbia Department of Transportation, but Tenant may use any materials that meet or exceed materials required pursuant to the foregoing; and

(xii) after receipt of the Final Certificate of Completion, manage New Street and the adjoining public plaza pursuant to the then applicable Open Space Management Plan, and which shall include the following:

A. Maintenance. Tenant shall be solely responsible for the maintenance of New Street; the daily cleaning and trash removal on New Street; and cleaning, repairing, and otherwise restoring New Street after all events held on New Street.

B. Event Space. Prior the receipt of the Final Certificate of Completion, Tenant shall enter into mutually acceptable leases with market managers to operate weekend public markets on New Street for as long as such markets are practical for, and desired by, the community, District, and Tenant. District agrees to reasonably cooperate with Tenant to support applications submitted to DCRA and other government agencies, if necessary, that enable Tenant

to flexibly program markets, events, outdoor seating and dining, and special programs in New Street.

C. Vehicular Access. New Street may be open or closed to motor vehicle traffic at different times at Tenant's (or its assigns) sole but reasonable discretion (except as provided for in subsection (iii) below). No permanent structures shall be built in the portion of New Street designated by Tenant for vehicular access.

D. Pedestrian, Utility and Emergency Access Easement. On or before the issuance of the Final Certificate of Completion, Tenant shall have entered into all required District-Utility Easements.

E. Use: Insurance and Indemnification Requirements. Tenant (and its assignees under the terms of this Lease) shall carry commercially reasonable amounts of insurance with respect to its use or occupancy of New Street. Unless resulting from the gross negligence or willful misconduct of the District or its representatives, District shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Tenant's ownership and operation of New Street.

7.2 Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair*. Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe order and condition, however the necessity or desirability therefor may arise, and shall make all such repairs in the most expedient manner and in compliance with Applicable Laws. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

7.2.2 *Cleaning of Leased Premises*. Tenant shall keep all areas of the Leased Premises clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances.

7.2.3 *Other Areas*. Tenant shall cause the Leased Premises to be maintained and operated in such a manner that will not directly or indirectly adversely affect, damage or cause injury to the District or any agency or department thereof. Without in any way limiting the first sentence of this Section 7.2.3, Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures or vegetation outside of the Leased Premises, which is owned or controlled by the District or any agency or department thereof. The provisions of this Section 7.2.3 shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.4 *No Obligation of the District*. The District, as the landlord under this Lease, shall not be required to furnish any services, utilities or facilities whatsoever to the Leased Premises, and the District shall have no duty or obligation to make any alteration, change, improvements, replacement or restoration or repair to the Leased Premises, or to demolish any

improvements. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance and management of the Leased Premises at all times during the Term.

7.3 Utilities. During the Term of the Lease, Tenant, at its sole expense, shall be responsible for handling all aspects associated with utilities affecting the Leased Premises. Such responsibility includes, without limitation, (i) locating, surveying, designing, permitting, installing and constructing any utility systems or facilities to, on or under the Leased Premises, (ii) removing, replacing, relocating, protecting and/or modifying any utilities affecting the Leased Premises, whether such utilities are located at the Leased Premises, or on adjacent property, (iii) maintaining and repairing all utility lines and services to, on or under the Leased Premises, and (iv) paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Leased Premises.

ARTICLE 8 ALTERATIONS

8.1 Alterations Generally. Tenant may, at any time and from time to time after issuance of the Final Certificate of Completion, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, “**Alterations**”) in and to the Leased Premises or any portion thereof provided that:

(i) no Alteration affecting the structural portions of the Project Improvements shall be undertaken except under the supervision of an Architect or licensed professional engineer;

(ii) the Alterations will not result in a violation of any Applicable Law or require a material change in any certificate of occupancy applicable to the Leased Premises;

(iii) the outside appearance of the Leased Premises and the Permitted Uses shall not be materially adversely affected, and the Alterations shall not materially (1) weaken or impair the structure or the Project Improvements, (2) reduce the size of the Improvements, (3) lessen the fair market value of the Leased Premises, or (4) reduce the utility or useful life of the Improvements;

(iv) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Leased Premises shall not be materially adversely affected;

(v) for any Significant Alteration or series of related Alterations aggregating to the amount of a Significant Alteration, Tenant shall obtain the prior written consent of the District for such Significant Alterations (or series of related Alterations) in accordance with the provisions of Section 8.2.3 below.

8.2 Performance of Alterations.

8.2.1 Generally. The Alterations shall be expeditiously made and completed with new, first-class quality materials and in a first-class and diligent manner. All Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant. Tenant shall, prior to the commencement of such Alterations, provide (i) broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article 12, (ii) appropriate construction performance and the labor and material payment bonds, and (iii) proof of funding sources for the costs of such Alterations.

8.2.2 *Requirements of Governmental Authorities.* Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to District and cause the Alterations to be performed in compliance with all Applicable Laws and requirements of Leasehold Mortgagees and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workerlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises that are being replaced.

8.2.3 *Significant Alterations.* Tenant shall submit to District, for District's review and approval, plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Significant Alteration not less than sixty (60) days before the proposed commencement of such proposed Significant Alteration. Within thirty (30) days after District's receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof, which shall not be unreasonably withheld, conditioned, or delayed. If rejected by District, District shall state in writing with reasonable specificity its basis for the rejection. In the event the District fails to respond to Tenant's request for its approval or disapproval of any proposed Significant Alterations within said thirty (30) day period, its approval shall be deemed to have been granted. Any Alteration for which consent has been received shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of District in accordance with the terms hereof.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Tenant's Default. Any of the following occurrences, conditions or acts shall constitute an "**Event of Default**" under this Lease, unless caused by a default or breach of District hereunder or, as to obligations of Tenant not involving the payment of Rent or other amounts, by a Force Majeure Event:

(i) if Tenant shall default in making payment when due of any Additional Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days after District shall have given notice to Tenant specifying such default and demanding that the same be cured;

(ii) if Tenant shall default in the observance or performance of the Construction and Use Covenant, or any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) on Tenant's part to be observed or performed (other than the covenants expressly set forth below) and Tenant shall fail to remedy such default within the time period provided herein for the cure thereof; if no such time period is provided then, within thirty (30) days after notice by District of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, Tenant shall (i) within thirty (30) days after the giving of such Default Notice, advise District of Tenant's intention to institute all steps (and from time to time, as reasonably requested by District, Tenant shall advise District of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same without interruption to cure such Default within the shortest reasonably possible time, but in no event longer than one hundred twenty (120) days;

(iii) Tenant shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, and such actions shall not be dismissed or vacated within ninety (90) days after the commencement of such actions;

(iv) Tenant shall be adjudicated bankrupt or insolvent by any court;

(v) involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Tenant, or a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(vi) Tenant shall make an assignment for the benefit of creditors or Tenant shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Tenant, and such actions shall not be corrected or dismissed within ninety (90) days after the commencement of such actions;

(vii) an Event of Default occurs under the Construction and Use Covenant or the Affordable Housing Covenant;

(viii) the levy upon or other execution or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (unless otherwise permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the acts or omissions of District or any of District's agents, employees, licensees or contractors), which levy, attachment or lien shall not be released, discharged or bonded against within forty-five (45) days following the date Tenant receives notice thereof;

(ix) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction and Use Covenant, or pay any insurance premiums, as and when the same become due and payable, or fail to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Construction and Use Covenant in accordance with its terms and conditions, and such failure shall continue for a period of seven (7) Business Days after notice of such failure from District;

(x) Tenant assigns this Lease or sublets the Leased Premises or any portion thereof in violation of this Lease;

(xi) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any purpose other than those permitted pursuant to this Lease; or

(xii) Any representation or warranty of Tenant in this Lease shall be materially false when made.

(xiii) Tenant fails to obtain the Final PUD Order by the Outside Date set forth on the Milestone Schedule, as such Outside Date may be extended in the event of Force Majeure or a Funding Shortage.

(xiv) Tenant fails to achieve the Commencement of Construction on or before the Outside Date set forth on the Milestone Schedule, as such Outside Date may be extended in the event of Force Majeure or a Funding Shortage.

9.2 Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled, to the extent permitted by Applicable Law, to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

9.2.2 *Termination.*

(i) This Lease, Lease Term and Leasehold Estate are subject to the limitation that whenever an Event of Default shall have happened and be continuing, District shall have the right, at its sole election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that District may have some other remedy hereunder or at law or in equity, to give Tenant notice of its intention to terminate this Lease in accordance with the terms of this Lease on a date specified in such notice, which date shall be no earlier than as may be specifically provided in this Lease, or if not so provided, then not less than sixty (60) days after the giving of such notice, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such notice was the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall be liable as provided in this Section. If any such notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises, and the right to remove all persons and property therefrom (other than residential and commercial subtenants, to the extent such subtenants' possession continues after termination of the Term and such subtenants have executed a nondisturbance and attornment agreement with District) and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by Applicable Laws, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs thereto. Notwithstanding the foregoing, following an Event of Default, District shall have no obligation to re-let the Leased Premises.

(ii) In the event of any termination of this Lease as provided in this Section or Section 9.6, Tenant shall forthwith quit and surrender the Leased Premises to District, and District may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid.

9.2.3 *Enforcement of Rights.* Following an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due hereunder. Additionally, District shall be entitled to recover from Tenant all costs of maintenance and preservation of the Leased Premises incurred by District for which Tenant is responsible hereunder.

9.2.4 *No Effect on Indemnification.* Nothing herein shall be deemed to affect the right of District to indemnification as set forth in this Lease.

9.2.5 *District's Right to Cure.* If Tenant shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, District, without thereby waiving such default, may perform but shall not be required to perform

the same for the account and at the expense of Tenant. All costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossess proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.6 *Remedy for Noncompliant Mortgagee.* In the event that a mortgagee is not an Institutional Lender or the prior written consent of District has not been secured, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of such mortgage or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.2.7 *Completion of Improvements.* In the event the construction of the Improvements has not been completed as of the occurrence of any Event of Default, whether or not this Lease or Tenant's right of possession hereunder is terminated, within fifteen (15) Business Days after occurrence of such Event of Default: (a) Tenant shall deliver all plans, reports, estimates, and models which have been prepared or made with respect to same to District and each of the same shall become the property of District (Tenant hereby agreeing to execute such documentation as District may require to evidence the transfer of the ownership interests in and to such documentation to the extent such interests are transferable or assignable); (b) Tenant shall inform each preparer of all such plans, reports, estimates, and models of transfer in ownership of such person property; and (c) District may take over the completion of the construction of the Improvements or cause the same to be completed, but Tenant shall nevertheless remain liable in damages to District for all loss and damage sustained by District by reason of the failure of Tenant to complete the Improvements in accordance with the terms of this Lease, which loss and damage shall include all sums paid by District for the completion of the Improvements. Whether or not this Lease is terminated or any suit is instituted, Tenant shall be liable for all reasonable costs, fees and expenses incurred by District in pursuit of its remedies hereunder or in recovering possession of the Leased Premises, completing construction of the Improvements, and renting the Leased Premises to others from time to time.

9.2.8 *Waiver by Tenant.* Tenant hereby expressly waives, for itself and all Persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any current or future Applicable Laws, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.2.9 *Accrual of Interest.* Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.2.10 *Attorney's Fees.* District shall be entitled to recover from Tenant the reasonable attorneys' fees and costs incurred by District in enforcing any of its rights and remedies hereunder. In the event District is represented by the Office of the Attorney General for the District of Columbia, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of

hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

9.2.11 *Limitation on Remedies.* Notwithstanding anything to the contrary contained in this Lease, if an Event of Default occurs (i) Tenant shall not be liable for incidental, consequential, punitive, or other special damages to District, and (ii) District shall be required to use commercially reasonable efforts to mitigate damages resulting from the Event of Default.

9.3 Remedies Cumulative. No right or remedy herein conferred upon or reserved to District is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.4 No Waiver. If District shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same nor of any other covenant, condition or agreement set forth herein, nor of any of District's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District to exercise or enforce any of its rights or remedies or Tenant's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. District shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by District. If District waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.5 Remedies for the District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within thirty (30) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then Tenant shall have the right to declare a default of this Lease upon notice to District, and exercise all remedies available at law or in equity and seek any compensatory damages (other than incidental, consequential, punitive and other special damages, which Tenant expressly waives pursuant to this Lease) which may be available to Tenant in an action; provided, however that Tenant shall have the right to terminate this Lease only if District shall default or fail in the performance of its covenant of quiet enjoyment and such default is materially adverse to the operation or maintenance of the Project Improvements. Any damages and claims against District shall be limited to the value of its interests in the Land.

9.6 Remedy for Tenant's Failure to Obtain Final PUD Order or Achieve Commencement of Construction.

9.6.1 *Sole and Exclusive Remedy.* Notwithstanding anything to the contrary contained in this Lease, with respect to an Event of Default under Section 9.1(xiii) or Section

9.1(xiv) above, the following provisions shall apply and shall constitute District's sole and exclusive remedy for such an Event of Default:

(i) Tenant shall not be entitled to notice and cure as set forth in Section 9.2.2(i).

(ii) The Lease shall terminate automatically, without further action of the District, and District (a) shall be entitled to direct the escrow agent to record the Notice of Termination and Release executed by Tenant and held in escrow in accordance with the Escrow Agreement of an even date with this Lease; (b) shall be entitled to transfer or assign all or a portion of its rights to the Land to any Person in its sole discretion, by directing Tenant to convey the Land to such Person; and (c) without further action or resort to court, may enter the Land and may file any other appropriate notice of entry with the Recorder of Deeds of the District of Columbia, including the release of any other covenant executed for the benefit of the District.

(iii) On and after a termination pursuant to this Section 9.6.1(ii), Tenant (and any of its successors and assigns) shall have no future right or claim to the Land and expressly waives any and all claims and defenses against District resulting the termination of this Lease under Section 9.6.1(ii), including, without limitation to, the right to lien the Land; seek injunctive relief of District's filing of the Notice of Termination and Release among the Land Records; equitable claims; right to seek monetary damages incurred by Tenant (including without limitation to, lost profits, predevelopment and development costs, carrying costs, return of any consideration paid for the Land); or any equitable defenses Tenant may have for failure to receive a Final PUD Order by the Outside Date, as such date may be extended only in the event of Force Majeure or failure to achieve Commencement of Construction, as such date may be extended in the event of Force Majeure, a Funding Shortage or extended by District in its sole and absolute discretion.

(iv) Tenant shall indemnify District against any claims by third parties resulting from a termination under this Section 9.6.1(ii). In the event that Tenant (or its successors and assigns), or a third party on Tenant's behalf or at Tenant's direction, seeks a court order to enjoin District's recordation of the Notice of Termination and Release or otherwise seeks relief from a court of competent jurisdiction, Tenant (and its successors and assigns) shall be liable for all reasonable attorneys' fees and costs incurred by District to defend District with regard to Tenant (or a third party's) filing such action(s), claim(s) or proceeding(s). In the event District is represented by the Office of the Attorney General for the District, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current Adjusted Laffey Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours attorneys of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

(v) The termination under Section 9.6.1(ii) shall be released by the Parties on the date of the Finance Closing.

ARTICLE 10 TRANSFER AND SUBLETTING; MULTIPLE LEASES

10.1 Transfer.

10.1.1 *Prior to Expiration of the Restricted Period.* Prior to expiration of the Restricted Period, Tenant shall not cause or suffer to be made a Transfer, in whole or in part, without the District's consent, which consent shall be in District's sole discretion.

10.1.2 *After Expiration of the Restricted Period.* Following expiration of the Restricted Period, Tenant shall have the right to effectuate a Transfer, in whole or in part, without the consent of District, subject to satisfaction of the conditions set forth in Section 10.2.

10.1.3 *Prior to Finance Closing.* During the period commencing on the Commencement Date through the Finance Closing, Tenant shall not effect a Transfer of any kind, including any transfer, conveyance or transaction otherwise excluded from the definition of Transfer via clauses (a) through (e) of such definition, without District's consent, which consent may be withheld in District's sole and absolute discretion; provided, however, District's consent to a transfer, conveyance or transaction falling under clauses (a) through (e) of the definition of Transfer shall not be unreasonably withheld, conditioned, or delayed. When requesting the District's consent to transfer under clauses (a) through (e), in addition to providing all applicable documentation pursuant to Section 10.2, Tenant shall demonstrate to District's reasonable satisfaction that such transfer, conveyance or transaction does not result in a change of Control of Tenant or a change in Control of any Member of Tenant from that existing as of the Commencement Date; that such transfer, conveyance or transaction will not impair District's rights or remedies under this Lease, the Construction and Use Covenant or any related document; and that such transfer, conveyance or transaction will be made for the sole purpose of the furtherance of the development of the Project Improvements.

10.2 Required Documentation. If Tenant desires to effect a Transfer, Tenant shall provide or demonstrate to District, as applicable, the following, at least thirty (30) days prior to the proposed effective date of the proposed Transfer:

(i) the name and address of the proposed Transferee and the names and addresses of the individuals that are Members of or Control the proposed Transferee;

(ii) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer;

(iii) evidence that the proposed Transferee's operation of the Project Improvements will be of a quality and character no less than Tenant's;

(iv) evidence of the nature and character of all of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee is legally entitled (or has a reasonable expectation of becoming legally entitled) to operate the Leased Premises, is not a Prohibited Person, and has sufficient experience owning and/or operating other properties of a similar nature to the Leased Premises;

(v) banking, financial, and other credit information, including, but not limited to, audited financial statements, relating to the proposed Transferee, in reasonably sufficient detail to enable District to determine that the proposed Transferee can provide financial assurances to satisfy District that the proposed Transferee is financially responsible and able to meet the obligations of Tenant under the Lease;

(vi) proof of insurance required under Article 12 obtained by the Transferee;

and

(vii) an executed assignment and assumption of this Lease and the Leasehold Estate in a form reasonably acceptable to District.

10.3 Transfer of Membership Interests; Amendment of Operating Agreement.

10.3.1 *Transfer*. Prior to the expiration of the Restricted Period, neither Tenant nor any Member of Tenant (including any successors in interest of Tenant or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Tenant, except as may be approved by District in its sole discretion; provided however, Tenant or a member of Tenant may assign, sell, convey or otherwise transfer the membership interests of Tenant without the approval of District in the following circumstances: (i) in connection with the admission of a new Member that is making an equity investment in Tenant, so long as Control of Tenant does not change; (ii) in accordance with the terms of the Operating Agreement, in the event there is a dispute among the Members which is resolved by the operation of a buy-sell provision, so long as Control of Tenant remains with either Stanton Development Corp., EastBanc, Inc., 700 Penn LLC; or (iii) in accordance with the terms of the Operating Agreement, in the event an equity investor exercises its rights thereunder. Following expiration of the Restricted Period, Tenant or its Members (including any successors in interest of Tenant or its Members) may assign, sell, convey or otherwise transfer, whether directly or indirectly, the membership interests of Tenant, with District's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers in ownership interest to any Member, including, without limitation, transfer for estate planning purposes.

10.3.2 *Operating Agreement*. Prior to the expiration of the Restricted Period, Tenant shall not materially amend the Operating Agreement without the prior written approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Operating Agreement may be amended without District's approval, but notice shall be given to District, if the purpose of the amendment is for tax, administrative, inheritance or similar reasons, provided such amendment shall not (a) alter the composition of Tenant's Members, (b) affect Tenant's interest in the Leasehold Estate or control of the Leased Premises or any portion thereof, (c) negatively impact Tenant's financial capacity or viability, or (d) potentially impede or otherwise affect the performance of Tenant under this Lease.

10.4 No Prohibition of Foreclosure Transfer. Notwithstanding anything to the contrary contained in this Article 10 or elsewhere in this Lease, this Article 10 shall not apply to and shall not prohibit a Foreclosure Transfer. In the event of a Foreclosure Transfer such notice and the information required under Section 10.2 shall be given as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer.

10.5 Liability of Tenant After Transfer. If this Lease is assigned or Transferred after the Restricted Period in accordance with Section 10.2, then the assigning Tenant shall be released from all liabilities and obligations accruing after the date of such assignment or Transfer; provided that the assignee expressly assumes in writing all of Tenant's obligations hereunder accruing from and after such Transfer and assignment. Nothing in this Section 10.5 shall be construed to release the assigning Tenant from any liability or obligation which accrued prior to the effective date of such assignment or Transfer. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. All covenants set forth in this Lease shall apply to and run with the land. Consent to one Transfer shall not be deemed consent to any other Transfer to which the provisions of this Article 10 shall apply.

10.6 Subleases.

10.6.1 *General*.

(a) Notwithstanding anything to the contrary contained in this Article 10, after the date that Tenant achieves Commencement of Construction, the prior written consent of District shall not be required before Tenant enters into a Sublease of all or any portion of the Leased Premises. Within ten (10) Business Days of execution of any Sublease, and as a condition to the effectiveness of any such Sublease, Tenant shall provide to District copies of the Sublease. Within sixty (60) days of receipt of written request from District from time to time during the Lease Term, Tenant shall deliver to District following such demand, a schedule of all Subleases giving the names of all subtenants, a description of the space that has been sublet pursuant to each Sublease, commencement and expiration dates and rental and other fees.

(b) Notwithstanding anything to the contrary in this Lease, Tenant may enter into new or restated licenses with the licensees to the licenses and permits with the Site Occupant Licensees (as defined in the Construction and Use Covenant) without the prior consent of District. Tenant may also enter into sublease or license agreements for community uses in accordance with Section 2.5 without District's consent.

10.6.2 *Local Retail Requirement.* Tenant shall comply with the Local Retail Requirement, and shall provide to the District such evidence of its compliance therewith as the District may reasonably request from time to time. The leases used to comply with the Local Retail Requirement shall (a) contain reasonably similar material terms and conditions (except for the rental rate reductions required hereunder), (b) have no greater obligations, restrictions or liabilities on the tenant satisfying the Local Retail Requirement, and (c) offer reasonably comparable tenant amenities and services as the market-rate leases in the Project. Tenant shall endeavor to lease the retail space in the Project to neighborhood-serving retail establishments in accordance with the Retail Plan. The Local Retail Requirement shall be maintained for no less than 15 years from the date of initial leasing.

10.6.3 *Non-Disturbance Agreement.* If District terminates this Lease by reason of an Event of Default, District shall recognize the right to possession granted to any subtenant under a Sublease pursuant to any subordination, non-disturbance and attornment agreement ("**Non-Disturbance Agreement**") entered into between District and such subtenant with respect to any such Sublease. At the request of Tenant, District shall enter into a Non-Disturbance Agreement with a subtenant (other than a subtenant under a lease for the Residential Units for residential occupancy), if (i) Tenant provides District a correct and complete copy of such Sublease and (ii) the rent (including additional rent), rent escalations and landlord services under such Sublease are comparable to the rent (including additional rent), escalations and landlord services in commercial lease of similar term, use and location in Washington, D.C. The Non-Disturbance Agreement shall (A) reflect prevailing customs and practice in non-disturbance agreements provided by ground lessors under long-term unsubordinated ground leases in Washington, D.C., (B) contain terms reasonably acceptable to District and (C) in all events include the following terms:

(1) District shall not be obligated to construct or pay for any improvements required under any Sublease, or pay any allowances, concessions, lease takeover costs, or other amounts that may be provided for in any Sublease; provided that a Sublease may permit the subtenant to perform and/or pay for the same and offset the amount of such payments against rent due under the Sublease;

(2) District shall not be bound by any payment of rent under any Sublease for more than one (1) month prior to its due date;

(3) District shall not be liable for damages for any breach, act or omission of any prior landlord under any Sublease, or subject to any offsets or defenses which

the subtenant may have against any prior landlord under its Sublease, subject to other terms of this Lease;

(4) District shall not be responsible for the return of any security deposit furnished to Tenant that has not been received by District; and

(5) District shall not be obligated to recognize the right to possession granted to any subtenant under any Sublease if such subtenant is in default under such Sublease beyond the expiration of any cure period provided for therein.

10.7 Multiple Leases. Tenant may, from time to time, request that District execute a separate ground lease for a portion of the Leased Premises that constitutes the entirety of a separate use (i.e. office, retail, residential), in order to facilitate Tenant's development, sale, transfer, conveyance or assignment of a portion of the Leased Premises ("**Additional Ground Lease**"). The terms and conditions of the Additional Ground Lease shall be identical to those contained in this Lease and shall not modify any obligation of either Party to this Lease except to the extent necessary to accurately describe the Leased Premises under the Additional Ground Lease, and to allocate the rent payable under this Lease over this Lease and the Additional Ground Lease. The Parties hereby expressly acknowledge and agree that the total Rent payable to District under all Additional Ground Leases and this Lease shall equal the total amount of Rent payable pursuant to this Lease.

10.8 Subdivision; Establishment of Condominium Regime or Reciprocal Easement. On or before the issuance of the Final Certificate of Completion, Tenant shall either establish a master condominium regime or separate lots and prepare a reciprocal easement agreement, declaration of covenants, conditions, restrictions and reservations, condominium declaration or such other similar agreement or agreements that are reasonably necessary and appropriate, to govern the use, maintenance and operation of the common areas and community spaces in the Project (collectively, "Condominium Instruments"). Further, Tenant may, at its election, submit each of the Residential Components to a residential condominium regime that is subordinate to the master condominium regime or the establishment of separate lots. In no event shall Tenant submit any portion of the Project to a condominium regime, or otherwise file or record any Condominium Instruments or subdivision without District's prior approval of such Condominium Instruments or subdivision, which approval shall not be unreasonably withheld, conditioned, or delayed, so long as such condominium regime or subdivision/reciprocal easement agreement contains such commercially reasonable provisions as are typically contained in such condominium regimes or subdivision/reciprocal easement agreements with respect to mixed-use projects in the Washington, D.C. metropolitan area comparable in size and scope to the Project Improvements.

10.9 Amended and Restated Ground Lease. Upon Tenant's establishment of a condominium regime or separate assessment and taxation lots for the Land as determined by Tenant establishing separate uses (i.e. office, retail, residential, parking), the Parties shall amend (and, to extent applicable restate) this Lease to amend the legal description of the Land to describe it as condominium units or assessment and taxation lots. The terms and conditions of such amended and restated ground lease shall be substantially similar to those contained in this Lease and shall not modify any obligation of either Party to this Lease except to the extent necessary to accurately describe the separate parcel ownership of the uses (i.e. office, retail, residential, parking), and to allocate the rent payable under this Lease among the parcel owners. The Parties hereby expressly acknowledge and agree that the total Basic Rent payable to District under the amended and restated ground lease shall equal the total amount of Basic Rent payable pursuant to this Lease. To the extent that Parties agree to execute multiple amended and restated ground leases for different components of the Project, the amended and restated ground leases may address, among others, (i) renewable 99-term, to the extent applicable, to the Residential

Components; (ii) that the Affordable Housing Covenant is applicable only to the Eighth Street Residential Component; (iii) a separate ground lease for New Street upon terms and conditions to be agreed to by the Parties; (iv) that the retail plan and other retail limitations will only be applicable to the retail parcels; (v) incorporate the necessary terms to address the easements, restrictions, and covenants required as result of Land being subject to different amended and restated ground leases. **Prohibited Transactions.** Notwithstanding any provision to the contrary, in no event shall any Transfer or Sublease (a) be made to a Prohibited Person, (b) be for a term longer than the Lease Term, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, or (e) violate Applicable Laws, or any term, covenant, condition or provision of this Lease.

ARTICLE 11 EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Commencement Date, the District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Leased Premises, irrespective of the cause of injury, damage or loss or any latent or patent defects in the Leased Premises, except to the extent any of the foregoing is due solely to the gross negligence, fraud or willful misconduct of the District Indemnified Party.

11.2 District's Exculpation. Except for gross negligence, fraud or willful misconduct, none of the District Indemnified Parties (exclusive District) shall have any liability (personal or otherwise) hereunder, and no property or assets of the District Indemnified Parties (exclusive District) shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the District Indemnified Parties arising from or in connection with this Lease or the Project Improvements. Any damages and claims against District shall be limited to the value of its interest in the Land.

11.3 Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Leased Premises during the Lease Term, including, without limitation, any acts, omissions or negligence in the making or performing of any repairs, restoration, alterations or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Laws; or (vi) any Default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused solely by the gross negligence, fraud or willful misconduct of such District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages; provided, however, that Tenant shall not be required to indemnify District or any District Indemnified Party if and to the extent that any Environmental Damages arise in connection with the violation of any Environmental Law in relation to the Leased Premises, which Environmental Damage is caused by District or any District Indemnified Party. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the Leased Premises caused or permitted by Tenant or any Tenant Agent results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article 11 shall include, without limitation, the burden and expense of defending all claims, suits and administrative proceedings (with qualified counsel), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the District Indemnified Parties.

11.3.4 *No Effect by Insurance Coverage.* The obligations of Tenant under this Article 11 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

11.4 Defense of Claim, Etc.

11.4.1 *Tenant's Defense Obligations.* If any claim, action or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article 11, then, unless the Office of the Attorney General determines that such representation violates District policy or is legally prohibited, upon demand by District or such District Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as District shall reasonably approve. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give notice of such election to the District Indemnified Party within ten (10) days after receiving notice of the claim therefrom. The District Indemnified Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5 Notification and Payment. Each District Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against them of any cost or expense as to which Tenant has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article 11. Tenant agrees to pay such District Indemnified Party all amounts due under

this Article 11 within sixty (60) days after receipt of the notice therefrom. Any delay by the District Indemnified Party in sending such notice does not relieve Tenant of the indemnification obligations set forth in this Article 11, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6 Survival. The provisions of this Article 11 shall survive the expiration or termination of the Lease Term with respect to events and matters that arise or occur during the Lease Term (even if discovered following the expiration or termination of the Lease Term).

ARTICLE 12 INSURANCE, DAMAGE AND DESTRUCTION

12.1 Insurance Coverage. Tenant will, at its sole cost and expense, keep and maintain or cause to be kept and maintained during the Term, insurance (the “**Required Insurance**”) as follows:

12.1.1 Property insurance for the Improvements (exclusive of those Improvements which are covered by Builder’s Risk Insurance as described in Section 12.1.3 below) with “special form” property insurance coverage as available in the insurance market on the Commencement Daye (and against such additional risks of loss as may be customarily covered by such policies after the Commencement Date), or any equivalent to a “special form” property insurance policy that has been reasonably approved by District (collectively, the “**Property Insurance Policy**”). The Property Insurance Policy shall cover at least the following perils: building collapse, fire, flood, impact of vehicles and aircraft, lightning, malicious mischief, terrorism, vandalism, water damage, and windstorm. The Property Insurance Policy shall also cover such other insurable perils as, under good insurance practices, other commercial property owners from time to time insure against for property and buildings similar to the Building in size, use, design, location and type of construction, and use. The Property Insurance Policy shall cover additional expense of demolition and increased cost of construction, including, without limitation, increased costs that arise from any changes in laws or other changes required by a Government Authority with respect to such restoration in a minimum amount of 100% of the replacement cost value of the Project Improvements. Notwithstanding anything to the contrary contained herein, prior to demolition of the improvements located on the Land as of the Commencement Date, Tenant shall only be required to keep and maintain a Property Insurance Policy up to a maximum coverage amount of \$2,000,000.

12.1.2 If the Improvements are located in an area designated as “flood prone” or a “special flood hazard area” under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, at least the maximum coverage for the Improvements available under the federal flood insurance plan. Regardless of the flood zone, the minimum amount of coverage required by this subsection for loss caused by floods shall not be less than that required by a Leasehold Mortgagee. Such insurance being hereinafter sometimes referred to as “**Flood Insurance**.”

12.1.3 During the period of the Construction Work or any period during which structural construction, repairs or alterations are being made with respect to the Improvements, builder’s risk insurance for not less than the full completed project insurable value of the Improvements, covering the same risks and otherwise complying with the same requirements as the Property Insurance Policy, with such coverage extensions as District may reasonably require (the “**Builder’s Risk Insurance**”). Builder’s Risk Insurance shall be written on a “completed value” form (100% nonreporting) or its equivalent and shall include an endorsement granting

permission to occupy. Builder's Risk Insurance shall cover: (a) the same perils that the Property Insurance Policy must cover; (b) loss of materials, equipment, machinery, and supplies whether on-site, in transit, or stored offsite, or of any temporary structures, hoists, sidewalks, retaining walls, and underground property; and (c) soft costs, plans, specifications, blueprints and models, all subject to a sublimit satisfactory to District on an actual loss sustained basis.

12.1.4 The following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "**Liability Insurance**"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall be in the so called "occurrence" form and, during the Construction Work, shall provide coverage of at least \$1,000,000 per occurrence and \$5,000,000 in the annual aggregate for all damages. After Completion of the Improvements, Liability Insurance shall provide coverage of at least \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate for all damages, with such \$3,000,000 annual aggregate for all damages amount increasing on each tenth (10th) anniversary of the Commencement Date by an amount equal to the percentage increase (but not decrease) in the then most recently published Consumer Price Index over the Consumer Price Index utilized for the immediately preceding measurement date (with the initial measurement date being the Commencement Date). Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability and products and completed operations.

12.1.5 In the event the Improvements contain a boiler or other pressure vessel or pressure pipes, Tenant shall obtain and maintain, or cause to be obtained and maintained, at Tenant's sole cost and expense, boiler, air conditioning, and pressure vessel (including, but not limited to, pressure pipes, steam pipes, and condensation return pipes) insurance providing coverage in a commercially reasonable amount throughout the Lease Term except during the period when the Builder's Risk Insurance is in effect (and with respect to those Improvements covered by such Builder's Risk Insurance).

12.1.6 After the issuance of the Final Certificate of Completion and subject to submission of sixty (60) day advance written notice to Tenant, such other types and amounts of insurance for the Improvements and their operations as District shall from time to time reasonably require, consistent with insurance commonly maintained for comparable properties (including increases in dollar amounts).

12.1.7 If a deductible is carried on any form of property insurance coverage, such deductible shall be no more than \$250,000 per occurrence. District agrees that the deductible described in this Section 12.1.7 may be increased from time to time as may be reasonably requested by Tenant in writing provided that such increased deductible is consistent with that of comparable properties in the District of Columbia.

12.1.8 Tenant shall require its general contractors and/or subcontractor(s) to provide a contractors' pollution legal liability insurance policy covering the liability of the contractor and subcontractor during construction for the process of removal, storage, transport, and disposal of hazardous waste and contaminated soil (the "**Contractors' Pollution Legal Liability Insurance Policy**"). The policy described in the preceding sentence shall include 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. The Contractors' Pollution Legal

Liability Insurance Policy shall be carried during initial construction of the Improvements and during any restoration of the Improvements pursuant to Section 12.5.

12.1.9 All insurance required under Sections 12.1.1, 12.1.2, 12.1.3, 12.1.5, 12.1.6 and 12.1.8, as applicable, shall name District as an “**Additional Insured**” as its interest may appear by an endorsement reasonably satisfactory to District; provided, however, for insurance required under Sections 12.1.1, 12.1.2, 12.1.3 and 12.1.5, the loss payee shall be Tenant (subject to the rights of any Leasehold Mortgagee as an additional loss payee or otherwise under a mortgagee endorsement with respect to a Leasehold Mortgage encumbering the Improvements). Any insurance required under Section 12.1.4 shall, where appropriate, name District as an “**Additional Insured**” as its interest may appear by an endorsement reasonably satisfactory to District.

12.1.10 Any Significant Alternations on the Land after Substantial Completion, Tenant and its General Contractors shall obtain such completion bonds and payment and performance bonds in amounts and in form and substance and from sureties as are acceptable to District in its reasonable discretion.

12.1.11 Tenant shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies for the coverages required under this Lease.

12.1.12 All insurance required by this Lease shall be from insurer(s) authorized to do business in the District of Columbia and reasonably satisfactory to District with “A-X” or above financial strength rating by AM Best (or the equivalent). Tenant shall pay or cause to be paid the insurance premiums for all required insurance when due and payable. Tenant shall deliver to District, immediately upon issuance, certificates of insurance (or copies of the insurance policies if requested by District) for all insurance required by this Lease. At least ten (10) days before any policy expires (time being of the essence), Tenant shall deliver evidence of renewal to the District. If at any time District has not timely received satisfactory written evidence that Tenant maintains and has paid for all required insurance, then without limiting District’s rights or remedies hereunder, District may (but shall have absolutely no obligation to) exercise its rights under Section 12.4.

12.1.13 In each insurance policy (or an endorsement thereto), the carrier shall agree not to cancel, terminate, or nonrenew such policy without giving District at least thirty (30) days prior written notice. The Property Insurance Policy shall provide that as to District’s interest, such policy shall remain valid and shall insure District regardless of any: (a) named insured’s act, failure to act, negligence, or violation of warranties, declarations, or conditions; (b) occupancy or use of the Improvements for purposes more hazardous than those permitted; or (c) District’s exercise of any of its respective rights or remedies hereunder, but only if such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees from an insurance carrier licensed to do business in the District of Columbia and does not result in a significant increase in the costs for the relevant insurance policy.

12.1.14 Notwithstanding anything to the contrary contained in this Lease, in the event of any conflict between the insurance coverages required under this Lease and the Construction and Use Covenant, the terms of the Construction and Use Covenant shall govern during the period of construction of the initial Project Improvements.

12.2 Worker’s Compensation Insurance. While any construction is being done on or about the Leased Premises, Tenant shall require its General Contractors, and, as applicable, their respective subcontractors, to obtain and maintain, worker’s compensation insurance covering all persons employed by contractors or subcontractors of any tier in connection with any such

construction, including without limitation all agents and employees of contractors and subcontractors with respect to whom death or bodily injury claims could be asserted against either District or Tenant. In addition, Tenant shall require its General Contractors to otherwise fulfill all applicable requirements of the law of the District of Columbia with respect to worker's compensation insurance.

12.3 Additional General Insurance Requirements.

12.3.1 The Property Insurance Policy shall contain an agreement by the insurer that loss shall be payable notwithstanding any negligence of Tenant or any other Person and waiving any right of subrogation by the insurer to any claims of Tenant against District. The Liability Insurance shall be written as primary policy coverage and not contributing with or in excess of any coverage carried by District, if any. Tenant agrees that the limits specified in this Article XII will be increased from time to time as may be reasonably requested by District, with sixty (60) days advance written notice, provided such increased limits are then being written on comparable properties in the District of Columbia. The insurance requirements provided herein are minimum requirements and shall not limit Tenant's liability to District arising under this Lease or under the law, even if the proceeds of such insurance are not adequate to fulfill such obligations. District agrees that if Tenant demonstrates to District's reasonable satisfaction that certain insurance coverage or limits required by this Article XII are not commercially available in the District of Columbia or are not being customarily written on comparable properties in the District of Columbia, District will waive the requirement for such insurance or reduce such limits provided that Tenant provides coverage as nearly as possible to the coverage that is waived or limits that are reduced which is commercially available and is being customarily written on comparable properties.

12.4 District Right to Obtain Insurance.

12.4.1 In the event that Tenant fails to provide District with written evidence that Tenant has obtained all insurance coverage required by this Lease, District may, following written notice to Tenant of its intention to do so, procure any such insurance for such periods as District shall elect not exceeding twelve (12) months, and Tenant shall, on demand, reimburse District for all outlays for such insurance with interest thereon at an annual rate equal to the Interest Rate plus five percent (5%) from the date District advances such premiums until repaid all sums due under this Section 12.4.1.

12.5 No Invalidation of Insurance. Tenant shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Leased Premises or otherwise which would or could have the effect of invalidating, in whole or in part or reducing the scope or amount of coverage provided by any of the insurance maintained pursuant to this Article VII. Tenant shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Leased Premises in such condition that the same cannot be insured in the amount of the full replacement cost thereof.

12.6 Blanket Policies. Any insurance required to be maintained herein by Tenant may be effected under blanket insurance policies relating to the Leased Premises and other properties, so long as Tenant provides evidence to District that the insurance described in Sections 12.1.1, 12.1.2 and 12.1.3 shall not be affected by losses at any or all additional locations, except with respect to terrorism insurance.

12.7 Subleases and Operating Agreements. All Subleases or operating agreements pertaining to any part of the Leased Premises shall require either Tenant or the counterparty thereto to carry liability insurance naming Tenant and District as additional insureds with limits reasonably prudent under the circumstances.

12.8 Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to District.

12.9 Notice to District. If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant's discovery of same.

12.10 Casualty Restoration.

12.10.1 *Obligation to Restore.* After the issuance of the Final Certificate of Completion, if all or any portion of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as it existed immediately before such casualty (a "**Casualty Restoration**"), but only to the extent the Net Insurance Proceeds shall be sufficient therefor (subject to the provisions of Section 12.10.2 below). Notwithstanding the foregoing, if any damage or casualty to the Improvements shall occur within the last five (5) years of the Term, and the cost of restoring the Improvements shall exceed [twenty percent (20%)] of the replacement cost of the entire Improvements, and Tenant so certifies to District within ninety (90) days of the date of such damage or casualty, then Tenant shall have the right to terminate this Lease, and neither party shall have any further rights or obligations hereunder, except that Tenant shall either (i)(A) assign to District any rights Tenant may have (subject to the restrictions approved by the District including Section 12.10.2 below) in and to any casualty insurance proceeds payable with respect to such damage or destruction and (B) pay to District any such Net Insurance Proceeds theretofore collected by it, or (ii) if requested by District by written notice given to Tenant within ten (10) days after the date of Tenant's termination notice (A) demolish any remaining Improvements, (B) remove from the Premises all debris resulting from such damage, destruction or demolition, (C) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction in excess of the reasonable cost of such demolition of remaining Improvements and such removal of debris, and (D) pay to District any such Net Insurance Proceeds theretofore collected by it, after deducting therefrom the reasonable cost of such demolition of remaining Improvements, removal of debris and such collection. Upon termination of the Lease as provided above, the Rent and other charges under this Lease shall be apportioned and paid to the date of such termination.

12.10.2 *Disposition of Insurance Proceeds.* If as of the date of any fire or other casualty there is a Permitted Mortgagee, the proceeds of fire or casualty insurance shall be payable to Tenant or may be made payable to such Permitted Mortgagee; provided that, if such Permitted Mortgagee does not apply such proceeds to the repayment of the debt owed by Tenant to such Permitted Mortgagee, such Permitted Mortgagee shall be obligated to hold such insurance proceeds separate and apart from its own funds and to pay the same to Tenant from time to time in accordance with the terms of the Permitted Mortgage for Tenant's repair, restoration, and rebuilding of the Improvements. The proceeds shall be paid out from time to time to Tenant as such work progresses, upon the written request of Tenant. Any excess insurance proceeds remaining after restoration or rebuilding of the Project Improvements and payment of the debt payable to such Permitted Mortgagee shall be paid over to Tenant.

12.10.3 *Commencement of Construction Work.* Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of all building permits, which shall be applied for no more than ninety (90) days following receipt of the Net Insurance Proceeds by Tenant arising from the damage or destruction which caused the need for such Casualty Restoration, and Tenant shall diligently pursue the completion of such Casualty Restoration.

12.10.4 Cooperation in Collection of Proceeds. Tenant and District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss, and Tenant and District shall as soon as practicable execute and deliver such proofs of loss and other instrument as may be required of Tenant and District, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

12.11 Restoration Funds. All Net Insurance Proceeds shall (subject to the provisions of Section 12.10.2 above) be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration.

12.12 Effect of Casualty on Lease. This Lease shall not terminate, be forfeited or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District's and Tenant's obligations hereunder shall continue as though the Leased Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

ARTICLE 13 FORCE MAJEURE

13.1 Excuse for Non-Performance. The Party(ies) whose performance has been or will be affected by any Force Majeure Event shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Lease.

13.2 Mitigation. Each Party shall be obligated to use reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects the performance of such Party.

13.3 Notice. Within ten (10) days after it becomes aware of the beginning of any Force Majeure Event, each Party shall give the other Party(ies) a statement describing the Force Majeure Event and its cause (to the extent known to the Party) and a description of the conditions delaying the performance of the Party's obligations. The affected Party shall also provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event.

ARTICLE 14 LEASEHOLD MORTGAGES

14.1 Prior to Issuance of the Final Certificate of Completion. Tenant's ability to mortgage or encumber the Leasehold Estate prior to issuance of the Final Certificate of Completion shall be governed by the Construction and Use Covenant.

14.2 Prior to Expiration of the Restricted Period. Prior to expiration of the Restricted Period, Tenant shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of

law, except that Tenant may encumber the Leasehold Estate with a Leasehold Mortgage with prior approval of District, which approval shall not be unreasonably withheld, conditioned, or delayed, in accordance with Section 14.3.

14.3 District's Review and Approval of Leasehold Mortgages.

14.3.1 *Tenant's Submissions for Approval of Leasehold Mortgage.* In the event that Tenant wishes to obtain any Leasehold Mortgage, Tenant shall provide to District, the following information and documents for District's review, at least forty-five (45) days prior to the effective date of the proposed Leasehold Mortgage:

(i) the name and address of the proposed Leasehold Mortgagee and information reasonably sufficient to enable District to determine whether the proposed Leasehold Mortgagee is an Institutional Lender;

(ii) a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Leasehold Mortgagee stating whether the proposed Leasehold Mortgagee is a Prohibited Person;

(iii) the proposed loan documents evidencing the Leasehold Mortgage; and

(iv) any appraisal or other analysis provided to or obtained by the proposed Leasehold Mortgagee regarding the value of Tenant's interest the Leasehold Estate, if available to Tenant.

14.3.2 *District's Period of Review.* District shall notify Tenant within twenty (20) days after its receipt of the information and documents pursuant to Section 14.3.1 of its approval, conditional approval or disapproval of the Leasehold Mortgage or request additional information and documents required for District's review and approval. If the District does not respond in writing within such twenty (20) day period, Tenant may provide to District a second written notice requesting that District approve or disapprove the proposed Leasehold Mortgage. After delivery of the second notice, District shall have an additional ten (10) days to notify Tenant in writing of District's approval or disapproval of the Leasehold Mortgage. In the event District fails to respond to a second notice submitted by Tenant to District, the Leasehold Mortgage shall be deemed approved by District, provided that (i) the second notice contains, in capitalized bold face type, the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF LEASEHOLD MORTGAGEE] LEASEHOLD MORTGAGE SUBMITTED ON [DATE OF DELIVERY OF LEASEHOLD MORTGAGE SUBMISSIONS TO DISTRICT]," District's failure to timely provide its approval or disapproval hereunder shall be deemed an approval of the Leasehold Mortgage. Any Leasehold Mortgage approved by the District shall be deemed a "**Permitted Mortgage.**" Any Leasehold Mortgagee under a Permitted Mortgage shall be deemed a "**Permitted Mortgagee.**"

14.3.3 *Tenant's Submissions Following District's Approval.* Tenant shall deliver to District a photostatic copy of the Permitted Mortgage immediately following the execution, delivery and (if applicable) recordation thereof, together with a certification by Tenant confirming that the photostatic copy is a true copy of the Permitted Mortgage and a certification by the Permitted Mortgagee thereunder confirming the address of such Permitted Mortgage for notices.

14.4 Effect of Permitted Mortgages.

14.4.1 *No Greater Rights.* The execution and delivery of a Permitted Mortgage shall not give or be deemed to give a Permitted Mortgagee any greater rights against District than those granted to Tenant hereunder.

14.4.2 *Subordination.* The lien of all Permitted Mortgages, and any other encumbrances on the Leasehold Estate, whether permitted or not permitted pursuant to the terms of this Lease, shall be subject and subordinate to this Lease.

14.4.3 *Conflict Between Terms.* As between District and Tenant, the terms and conditions of this Lease shall govern in the event of a conflict between the terms hereof and the terms and conditions of any Permitted Mortgage or any instrument relating to the loan received thereby (or any other transaction) and notwithstanding any consent by District to any such financing or transaction, except as may otherwise be expressly agreed to in writing by District and Tenant.

14.5 Notice of Default. If District notifies Tenant that Tenant has defaulted in any of its obligations under this Lease, then District shall also give a copy of such notice to any Permitted Mortgagee; provided District has reviewed the certification of the Permitted Mortgagee required under Section 14.3.1(b). In the case of an assignment of such Permitted Mortgage or change in address of such Permitted Mortgagee, said assignee or Permitted Mortgagee, by written notice to District, may change the address to which such copies of Notices are to be sent. District shall not be bound to recognize any assignment of such Permitted Mortgage unless and until District shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Permitted Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring District to give Notices or copies thereof to said Permitted Mortgagee shall be binding upon District unless and until all of said holders shall designate in writing one of their number to receive all such Notices and copies thereof and shall have given to District an original executed counterpart of such designation.

14.6 Performance of Covenants. District shall accept performance or payment by such Permitted Mortgagee of any obligation of Tenant under this Lease, with the same force and effect as though performed or paid by Tenant if such performance or payment is tendered within the period in which Tenant may under the terms of this Lease tender such performance or payment.

14.7 Opportunity to Prevent Termination.

14.7.1 *Forbearance of Termination.* If District elects to terminate this Lease by reason of an Event of Default, any Permitted Mortgagee may request District to forbear from terminating this Lease and District shall so forbear if and for so long as (i) within one hundred eighty (180) days after receiving District's notice of termination, the Permitted Mortgagee has acquired the Leasehold Estate, (ii) the Permitted Mortgagee shall perform all of the obligations of Tenant under this Lease as and when due, to the extent reasonably susceptible of being performed by the Permitted Mortgagee, (iii) the Permitted Mortgagee shall pay or cause to be paid all Rent and other monetary amounts as may be due and payable under this Lease, and (iv) the Permitted Mortgagee shall cure any other then-existing ongoing Event of Default reasonably capable of being cured by the Permitted Mortgagee. For purposes of this Article 14, whether a default is reasonably capable of being cured by a Permitted Mortgagee shall be determined without regard to the financial or other resources of such Permitted Mortgagee or the expertise of such Permitted Mortgagee.

14.7.2 *No Obligation to Continue.* The Permitted Mortgagee shall not be obligated to continue any action or proceeding to acquire the Leasehold Estate, and may abandon such at any time in its sole discretion. If the Permitted Mortgagee abandons any effort to acquire the Leasehold Estate, then this Lease shall terminate upon ten (10) days' notice of such termination from District.

14.7.3 *No Preclusion.* Nothing contained in this Article 14 shall preclude District, subject to the provisions of this Article 14, from exercising any of its rights or remedies with respect to any other Event of Default during the pendency of any such action or proceeding to acquire the Leasehold Estate. Nothing in this Lease shall obligate District to take any action or institute any proceedings to eject, evict, or remove Tenant or any other occupant of the Leased Premises.

14.8 No Modification or Cancellation of Lease. District and Tenant shall not (i) modify, amend, extend or waive any of the terms of this Lease in any way that materially increases the obligations of Tenant, or (ii) cancel or terminate this Lease, either in writing or orally, unless consented to in writing by any Permitted Mortgagee, in either instance.

14.9 Permitted Mortgage not a Transfer. The granting of a Permitted Mortgage shall not be deemed to constitute a Transfer of this Lease or of the Leasehold Estate in contravention of Sections 10.1 and 10.3.1 hereof. Notwithstanding anything to the contrary herein, no Permitted Mortgagee shall be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate unless such Permitted Mortgagee consents to such assignment or transfer in writing.

14.10 Insurance Proceeds. If a Permitted Mortgagee (or its assignee or designee) shall become the owner of the Leasehold Estate and if the Improvements shall have been or become materially damaged on, before, or after the date such Permitted Mortgagee (or assignee or designee) shall become the owner of the Leasehold Estate, and such Permitted Mortgagee has agreed to apply the Net Insurance Proceeds to the repair and restoration of the Improvements, then the Permitted Mortgagee (or assignee or designee) shall be obligated to repair, replace, or reconstruct the Improvements (unless the Lease has been terminated pursuant to Section 12.12 only to the extent of the net insurance proceeds received by the Permitted Mortgagee (or such assignee or designee) by reason of such damage. Should such Net Insurance Proceeds be insufficient to repair, replace, or reconstruct the Improvements to the extent required by Section 12.12, and should the Permitted Mortgagee (or assignee or designee) elect not to fully reconstruct the Improvements to the extent required by Section 12.12.1, such failure shall entitle District to terminate this Lease, and the Net Insurance Proceeds shall be equitably distributed to the parties in proportion to their respective interests in the Improvements, taking into consideration the remaining Lease Term; provided, however, there shall be deducted from the share payable to the Permitted Mortgagee or Tenant an amount sufficient to pay for the cost of returning the Leased Premises to grade level and removing all debris therefrom (if such costs are not paid to District directly under such insurance policies).

14.11 Foreclosure.

14.11.1 *Notice to District.* In the event any Permitted Mortgagee intends to initiate a Foreclosure Transfer under its Permitted Mortgage, the Permitted Mortgagee shall first notify District of its intent to do the same in writing, at least ninety (90) calendar days prior to the initiation of any proceeding relating to the Leasehold Estate, and shall include in its notice the amount of the Tenant's outstanding financial obligations to such Permitted Mortgagee as of the date of the notice (the "**Foreclosure Notice**"). A Permitted Mortgagee who has initiated a Foreclosure Transfer on a debt secured by a Permitted Mortgage shall notify the District in writing not later than sixty (60) days prior to the date of the Foreclosure Transfer. A Foreclosure

Transfer shall not require prior written consent of District or constitute a breach of any provision of or a Default under this Lease; provided that (i) such Foreclosure Transferee is not a Prohibited Person, and (ii) within thirty (30) days after the Foreclosure Transfer, the Foreclosure Transferee shall assume, by written instrument, this Lease, and the obligations, terms and conditions contained herein.

14.11.2 *Restriction on Resale of Leasehold Estate.* If, as a result of the Foreclosure Transfer, the Permitted Mortgagee becomes the Foreclosure Transferee, then prior to the reselling of the Leasehold Estate, the District or its designee shall have the right to purchase the Leasehold Estate for the amount secured by the Permitted Mortgage. The Permitted Mortgagee shall notify the District of the amount it is owed in writing (“**Mortgagee Notice**”) and the District shall have thirty (30) days from the date of receipt of the Mortgagee Notice to notify the Permitted Mortgagee that it intends to purchase the Leasehold Estate, and must complete such purchase within ninety (90) days from the date of District’s receipt of the Mortgage Notice. In the event the District elects not to purchase the Leasehold Estate, or fails to notify the Permitted Mortgagee of its election to purchase within thirty (30) days of the date of District’s receipt of the Mortgagee Notice, then the Permitted Mortgagee shall be free to sell the Leasehold Estate to a third party.

14.12 Permitted Mortgage Default. Subject to the provisions of Article 9 of this Lease, no default or event of default by Tenant under a Permitted Mortgage or under any other document or instrument evidencing or securing the indebtedness secured by a Permitted Mortgage will, in and of itself, constitute a default under this Lease, nor shall the exercise by a Permitted Mortgagee of any of its remedies (including, without limitation, the appointment of a receiver) under the Permitted Mortgage, in and of itself constitute such a default.

14.13 Number of Permitted Mortgages.

14.13.1 *Generally.* There may exist more than one Permitted Mortgage at any given time, but the aggregate amount of all such Permitted Mortgagees may not exceed the value of the Leasehold Estate.

14.13.2 *Rights of Multiple Permitted Mortgagees.* In the event that there is more than one Permitted Mortgage at any given time, all rights and remedies accorded to a Permitted Mortgagee hereunder and all references to a Permitted Mortgagee herein, shall be deemed to be accorded, and to be references, to each of such Permitted Mortgagees; provided, however, that as between multiple Permitted Mortgagees, the rights and remedies of the senior such Permitted Mortgagee shall be senior to the rights and remedies of any and all other such Permitted Mortgagees and, in the event of any conflict or inconsistency in the exercise, enforcement or construction of rights and remedies given multiple Permitted Mortgagees hereunder, the exercise, enforcement and construction of such rights and remedies by or for the senior Permitted Mortgagee shall govern, control and take precedence over any exercise, enforcement and construction of such rights and remedies by or for all Permitted Mortgagees that are junior to such senior Permitted Mortgagee.

14.13.3 *Syndicates.* The Permitted Mortgagee may consist of a syndicate of Institutional Lenders or other syndicate meeting the definition of Permitted Mortgagee; provided, however, that (i) only one Institutional Lender or a duly authorized professional servicer representing all lenders may exercise the rights of the Permitted Mortgagee hereunder; (ii) such Institutional Lender shall be designated by a notice delivered to District and executed by all of the Institutional Lenders in such syndicate; (iii) District shall deal solely with such Institutional Lender, on behalf of such syndicate, as the sole Permitted Mortgagee hereunder; (iv) the actions taken, and the documents executed, by such Institutional Lender shall be binding upon all Persons in such syndicate; and (v) District shall be permitted to disregard any notice, demand,

direction or other communication received from any Institutional Lender in such syndicate that is not such designated Institutional Lender.

14.14 Restrictions on Use of Proceeds of Permitted Mortgage. Until expiration of the Restricted Period except as otherwise consented to by District, Tenant shall not pay, disburse or distribute any proceeds of any Permitted Mortgage to itself or any Affiliate or Member of Tenant or otherwise withdraw any equity through any Permitted Mortgage.

14.15 Recognition Agreement. District shall, if requested by Tenant, enter into a recognition agreement with any Permitted Mortgagee confirming and acknowledging such Permitted Mortgagee's rights as such hereunder and such other matters as may be reasonably requested by such Permitted Mortgagee; provided that District shall have no obligation to approve any other matter that, in District's sole discretion, materially (i) increases District's obligations under this Lease, (ii) diminishes District's rights under this Lease, or (iii) limits or impairs District's remedies under this Lease.

14.16 Permitted Mortgagee Loss Payable. District agrees that the names of each Permitted Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

ARTICLE 15 EMINENT DOMAIN

15.1 Total Condemnation. If the Leased Premises or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, this Lease shall terminate upon the effective date of the taking.

15.2 Partial Condemnation. If less than all or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, and District and Tenant mutually determine, within a reasonable period of time after such taking, that the remaining portion of the Improvements cannot economically and feasibly be used by Tenant under the terms of this Lease, then this Lease shall terminate.

15.3 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.1 or Section 15.2, the condemnation award with respect to the Leased Premises shall be distributed as follows: first to the Permitted Mortgagee in an amount up to the lesser of the valuation of the Leasehold Estate or an amount sufficient to pay or provide for the payment and discharge of all of the then-outstanding obligations under the Leasehold Mortgage, and thereafter any remaining balance shall be apportioned between the District and Tenant in accordance with Applicable Law.

ARTICLE 16 GENERAL PROVISIONS

16.1 Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, either written or oral, pertaining to the subject matter of this Lease.

16.2 Amendments. This Lease may be amended only by a written instrument signed by District and Tenant.

16.3 Choice of Law. This Lease shall be governed by and interpreted in accordance with the internal laws of the District of Columbia, without giving effect to conflict of laws provisions.

16.4 Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Lease, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Lease or the valid portion of such provision, which provisions are deemed severable.

16.5 No Implied Waivers. No waiver by a Party of any term, obligation, condition or provision of this Lease shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting the District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue or extend the Lease Term or the Lease, or affect any notice given to Tenant prior to the receipt of such moneys.

16.6 Successors and Assigns. Each of the Parties hereto binds itself and its successors and authorized assigns to the others and to the successors and authorized assigns of each of the other Parties with respect to all covenants of this Lease.

16.7 Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease" and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time. References to any schedules or exhibits shall be construed to mean references to such schedules or exhibits as revised from time to time. The terms "include" and "including" shall be construed at all times as being followed by the words "without limitation" or "but not limited to" unless the context specifically indicates otherwise. Reference to "days" herein shall refer to calendar days unless otherwise specified. If the end of any period described herein falls on a Saturday, Sunday, or District of Columbia or federal holiday, the end of such period shall be deemed to fall on the next Business Day. In the event that any publication, institution or entity referred to herein ceases to exist, is discontinued or ceases to supply the data required to perform some measurement or calculation as set forth in this Lease, the Parties agree that they shall attempt in good faith to mutually agree upon a reasonable modification to this Lease to name an alternative publication, institution or entity to achieve substantially the same result as is intended by the Parties on the Commencement Date. This Lease has been negotiated and entered into by each Party with the advice of counsel and shall not be construed against one Party or another based on which Party drafted any portion of this Lease.

16.8 Notices. Any notice, request or other communication (“**Notice**”) given or made hereunder shall be in writing and either (a) sent by any of the Parties or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address specified in this Section 16.8 for the party to whom the Notice is to be given, or to such other address, addresses, or substitute recipient for such party as such party shall hereafter designate by Notice given to the other party pursuant to this Section 16.8. Each Notice mailed shall be deemed given on the third Business Day following the date of mailing the same and each Notice delivered in person or by overnight courier shall be deemed given when delivered. Copies of all Notices given under this Lease must be given or served simultaneously and in the same manner required for Notices, as follows:

(i) If to the District:

Office of the Deputy Mayor for Planning and Economic Development
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004
Attn: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General
441 4th Street, NW, 10th Floor South
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

(ii) If to Tenant:

Stanton Development Corporation
305 7th Street, SE
Washington, DC 20003
Attn: Ken Golding

Eastbanc, Inc.
3307 M Street, N.W. Suite 200
Washington, DC 20007
Attn: Anthony Lanier

Clark Development Investors I LLC
c/o CEI Realty, Inc.
7500 Old Georgetown Road
15th Floor
Bethesda, Maryland 20814

With a copy to:

Reed Smith LLP
1301 K Street, NW, Suite 1100

Washington, DC 20005
Attn: Debra Yogodzinski, Esquire

Either Tenant or District, by notice to the other, may change its address for purposes of this Lease. Further, District agrees that copies of any notices provided to Tenant shall be provided to any Permitted Mortgagee of which District has notice.

16.9 Memorandum of Lease. District or Tenant, at the request of the other, will promptly execute and deliver to the requesting party(ies) a Memorandum of Lease, duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term and any other provisions hereof, excepting the rental provisions, as either of the Parties may request. The Memorandum of Lease may be recorded by either District or Tenant. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease.

16.10 Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

16.11 Counterparts. This Lease maybe executed in several original or electronically transmitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties may not be signatories to the original or the same counterpart. Any such original or electronically transmitted counterpart shall be admissible into evidence as an original of this Lease against the person which executed it; provided, however, that a full and complete set of any such original or electronically transmitted signature pages or copies thereof evidencing the intended execution of this Lease by all Parties must be produced if this Lease is to be considered binding upon the Parties.

16.12 Non-Merger. There shall not be a merger of Tenant's or District's interests in this Lease or the Leasehold Estate with (a) any interest of District in the Improvements; or (b) District's interest in this Lease or any other interest of District in the Leased Premises, direct or indirect, whether hereby or hereafter created; or (c) District's fee estate in the Land, or any part thereof, by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly, both an interest in this Lease or the Leasehold Estate, and all or part of (a), (b) or (c) above, and no such merger shall occur unless and until all persons, including, without limitation, District and Tenant, shall join in a written instrument effecting such merger and shall duly record the same.

16.13 Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF PARTIES HEREUNDER, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

16.14 Anti-Deficiency Limitations. Tenant acknowledges and agrees, that the obligations of District under this Lease are subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§47-355.01 – 355.08, as the

foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned.

16.15 No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them a relationship of principal and agent, employment, partnership or joint venture. District and Tenant shall each be and remain an independent contractor with respect to all rights obtained and services performed under this Lease.

16.16 District's Right to Notice of Injury or Damage. Tenant shall notify District within thirty (30) days of any occurrence at the Leased Premises of which Tenant has notice and which Tenant believes could give rise to a claim of \$1,000,000, subject to adjustment for CPI Index, or more, whether or not any claim has been made, complaint filed or suit commenced.

16.17 Litigation. Tenant shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which could materially adversely affect (i) Tenant's ability to fulfill its obligations under this Lease, or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.18 Procurement of Materials and Supplies. To the maximum extent feasible, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to District.

16.19 Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the 110th Congress of the United States, plus twenty one (21) years thereafter.

16.20 Time for Performance. All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. In the event that the date for performance or cure falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

16.21 CPI Index Adjustment. Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as "adjusted pursuant to the CPI index" (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI Index for the calendar month immediately preceding the date of such adjustment, and the denominator of which shall be the CPI Index for the calendar month during which the Commencement Date occurred.

16.22 Incorporation of Schedules and Exhibits; Recitals. All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits or the Schedules and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

16.23 Right of First Offer. If District desires to transfer (other than the granting of a mortgage or deed of trust on) all or part of the interest of District in and to the Leased Premises, the following provisions shall apply:

(i) District shall give Tenant notice of District's desire to offer such interest for transfer (the "**Sales Notice**"). During the thirty (30) day period following Tenant's receipt of the Sale Notice ("**Response Period**"), Tenant may notify District of the price ("**Tenant's Price**") at which Tenant is willing to purchase the District's interest in the Leased Premises ("**Right of First Offer**"). If Tenant fails to timely provide a Price Notice, District may market and sell District's interest in the Leased Premises to any Person and on such terms as District may determine, and the provisions of this Section 16.23 shall be of no further force or effect and Tenant shall have no further rights pursuant to this Section 16.23.

(ii) If Tenant provides a Price Notice, then during the thirty (30) day period ("**Negotiation Period**") following Tenant's Price Notice, Tenant and District shall negotiate in good faith the terms (including purchase price) upon which District would sell and Tenant would purchase District's interest in the Leased Premises. If by the expiration of the Negotiation Period, District and Tenant shall not have agreed in writing on all terms of the sale of District's interest in the Leased Premises to Tenant to their mutual satisfaction, District may market and sell District's interest in the Leased Premises to any Person on such terms as negotiated between the District and Tenant during the Negotiations Period; provided, however, that the purchase price of any proposed sale to any Person cannot be less than ninety-five percent (95%) of the purchase price negotiated between the District and Tenant during the Negotiations Period without District being obligated to again offer the fee interest for sale to Tenant at the lower purchase price. Notwithstanding any agreement reached between the Tenant and the District under this Section 16.23(b), the Tenant acknowledges and agrees that the District's right to convey its interest in the Leased Premises and Tenant's right to acquire such interest shall be subject to all Applicable Laws governing the transfer or sale, of District real property, including, without limitation, Council approval of any such transfer or sale and District shall have no obligation to transfer or sell District's interest in the Leased Premises to Tenant pursuant to any agreement reached under Section 16.23(b) or otherwise if Council does not approve such transfer or sale.

(iii) Notwithstanding the rights granted to the Tenant in Section 16.23(a) and Section 16.23(b), Tenant shall not have the option, or any of the rights described in this Section 16.23 at any time that an Event of Default under this Lease shall exist, or if an Event of Default arises at any time during the process set forth in this Section 16.23, and during the existence of any Event of Default under this Lease, District may market and sell District's interest in the Leased Premises to any Person on such terms as District may determine, and the provisions of this Section 16.23 shall be of no further force or effect and Tenant shall have no rights pursuant to this Section 16.23.

(iv) The rights of Tenant described in this Section 16.23 shall not restrict any transfer of District's interest in the Leased Premises (whether by sale, exchange, gift or otherwise) to any Governmental Authority, or in connection with any transaction that involves material assets or liabilities of the District. Further, the rights of Tenant described in this Section 16.23 shall fully terminate and be of no further force or effect upon the initial sale by District of its interest in the Leased Premises, and this Section 16.23 and Tenant's rights described in this Section 16.23 shall not be binding upon any transferee of District's interest in the Leased Premises.

16.24 Estoppel Certificates. Tenant agrees at any time and from time to time upon not less than ten (10) Business Days prior written request by District, to execute, acknowledge and deliver to District, and District agrees from time to time in connection with the encumbrance of the Leased Premises with a Leasehold Mortgage or a Transfer permitted hereunder or other financial transaction related to the Project, upon not less than ten (10) Business Days prior written request by Tenant, to execute, acknowledge and deliver to Tenant, a statement in writing, certifying that (i) this Lease is unmodified and in full force and effect (or if there have been modifications or some respect in which the same is not in full force and effect, that the same is in

full force and effect, as modified or otherwise qualified and stating the modifications and qualifications), (ii) the dates to which the Rent and other charges have been paid, (iii) whether or not to the knowledge of the Party so certifying there is any existing default, or event which with the giving of notice or the passing of time would constitute a default, by the other party in the compliance, performance and observance of the covenants and conditions of this Lease to be performed or observed on the part of such other party, and (iv) such other matters as may reasonably be requested by the requesting Party. Any statement delivered pursuant to this Section 16.24 may be relied upon by District or Tenant, as applicable, and any Person (including Leasehold Mortgagees) that has or may acquire an interest in the Leased Premises or Leasehold Estate.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be duly executed as of the day and year first above written.

DISTRICT:

DISTRICT OF COLUMBIA, a municipal corporation, by and through the Deputy Mayor for Planning and Economic Development

By: _____
Name: Victor L. Hoskins
Title: Deputy Mayor for Planning and Economic Development

Approved for legal sufficiency by:
Office of the Attorney General for the District of Columbia

By: _____
Emily K. Morris
Assistant Attorney General

TENANT:

700 PENN LLC, a Delaware limited liability company

By: TBS Associates LLC, its sole member

By: Eastbanc, Inc., manager

By: _____
Name: Anthony M. Lanier
Title: President

EXHIBIT A

Legal Description

Lot 803:

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being described as follows:

Part of Lot numbered Eighteen (18) in Square numbered Nine Hundred One (901), as per plat recorded in Book 207 at page 133, in the Office of the Surveyor of the District of Columbia, and more particularly described as follows:

Commencing at a point, said point being at the Southeast corner of Square 901 and also being the intersection of the North line of D Street SE and the West line of 8th Street SE, thence running with the West line of 8th Street SE North 448.67 feet to the Point of Beginning, thence the following courses and distances: Departing said West line of 8th Street SE West 248.17 to a point, said point being on the East line of 7th Street SE, thence running with the East line of 7th Street SE North 76.00 feet to a point, thence East 248.17 feet to a point on the West line of 8th Street SE, thence running with the West line of 8th Street SE South 76.00 feet to the Point of Beginning and containing 18,861 square feet.

NOTE: Said property being now known for purposes of assessment and taxation as Lot numbered Eight Hundred Three (803) in Square numbered Nine Hundred One (901).

Lot 804:

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being described as follows:

Part of Lot numbered Eighteen (18) in Square numbered Nine Hundred One (901), as per plat recorded in Book 207 at page 133, in the Office of the Surveyor of the District of Columbia, and more particularly described as follows:

Beginning at the Southeast corner of Square 901 and also being the intersection of the North line of D Street SE and the West line of 8th Street SE, thence running with the North line of D Street SE West 130.50 feet to a point, said point being the intersection of the North line of D Street SE and the North line of Pennsylvania Avenue SE, thence running with the North line of Pennsylvania Avenue SE N 63°06'38" W 131.94 feet to a point, said point being the Southwest corner of Square 901 and also being the intersection of the North line of Pennsylvania Avenue SE and the East line of 7th Street SE, thence running with the East line of 7th Street SE North 389.00 feet to a point, thence departing said East line of 7th Street SE East 248.17 feet to a point, said point being on the West line of 8th Street SE, thence running with the West line of 8th Street SE South 448.67 feet to the Point of Beginning and containing 107,836 square feet.

NOTE: Said property being now known for purposes of assessment and taxation as Lot numbered Eight Hundred Four (804) in Square numbered Nine Hundred One (901).

Exhibit B : Basic Ground Rent Calculation Model

Basic Rent Definitions

The Agreement stipulates that the Ground Rent is a 5% annual payment of the unencumbered land value (\$50 a FAR) minus the permitted deductions, as such terms are more particularly defined in the Agreement and recited below (in the event of any conflict in definitions or omission of defined term below, the definition contained in the Agreement shall govern):

“Agreement” means that certain Land Disposition and Development Agreement by and between the District of Columbia and Stanton-Eastbanc LLC dated October 27, 2010.

“Ground Rent” means five percent (5%) the South Parcel Residual Land Value, as determined at Closing, but in any event not less than \$200,000, nor more than \$1,000,000 per year, calculated as of Closing; provided, however, in the event Closing occurs more than thirty (30) days prior to Developer’s Closing on its construction financing for the Project, or the first Phase thereof, Ground Rent shall be determined no more than thirty (30) days, and no less than ten (10) days, prior to Developer’s closing on its construction financing for the Project or the first Phase thereof.

“Land Value” means fifty dollars (\$50) per FAR square foot of development approved for the Property by the Zoning Commission as part of the PUD.

“Permitted Deductions” means any (i) ADU Land Credit; (ii) ADU Value Gap; (iii) Unanticipated Proffers; and (iv) any Costs to be incurred by Developer in connection with (a) remediation of Hazardous Materials, subject to the Remediation Cap, (b) construction of the New Street, subject to the Soft Cost Cap or (c) demolition of existing improvements on the Property, subject to the Soft Cost Cap, all in accordance with the Final Project Budget and Funding Plan.” [Note: Remediation Cap is \$3M; soft cost cap is 40% of total development costs for a particular undertaking or activity]

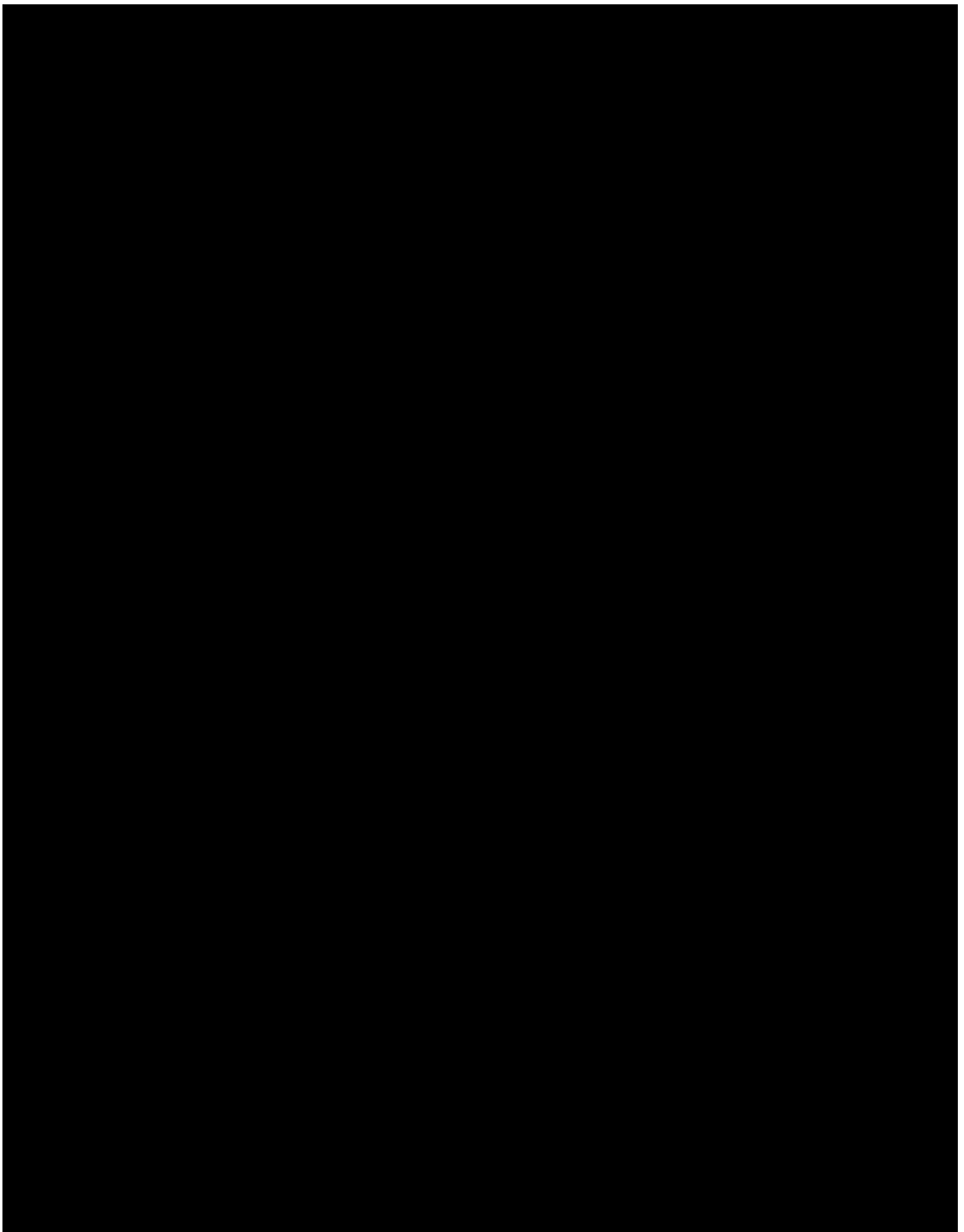
“South Parcel Residual Land Value” means Land Value less the Permitted Deductions, as determined at Closing based on the Final Project Budget and Funding Plan.

Based on the approved PUD FAR and the Agreement the Initial Basic Rent would be \$222,389 as indicated below.

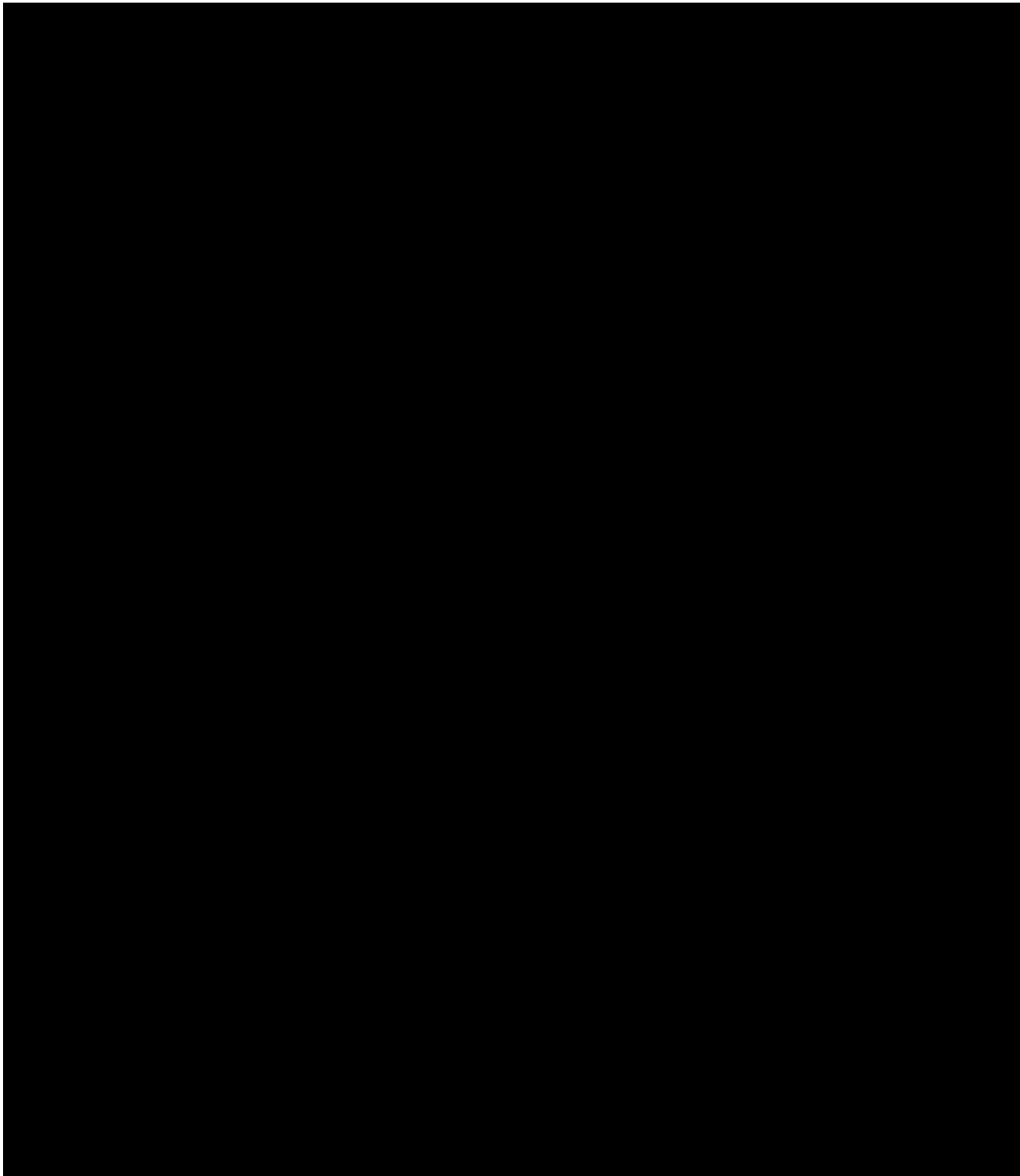
Basic Rent Recalculations

The Basic Rent Calculation Model is contained herein, with the Initial Basic Rent calculated based on available data at the time of Closing. Pursuant to Section 4.1 of the Ground Lease, Basic Rent shall be re-calculated as follows:

- Basic Rent shall be re-calculated based on the then current inputs into the Basic Rent Calculation Model no less than thirty (30) days prior to Financing Closing.
- Basic Rent shall be recalculated prior to issuance of Final Certificate of Completion based on insertion of actual, final Costs incurred by Tenant, as applicable, into the Basic Rent Calculation Model.
- If at any time during the Term of the Ground Lease Tenant ceases, or for any other reason fails to provide, items identified as Unanticipated Proffers in the Basic Rent Calculation Model, Basic Rent shall be re-calculated after removing such item from the Basic Rent Calculation Model.

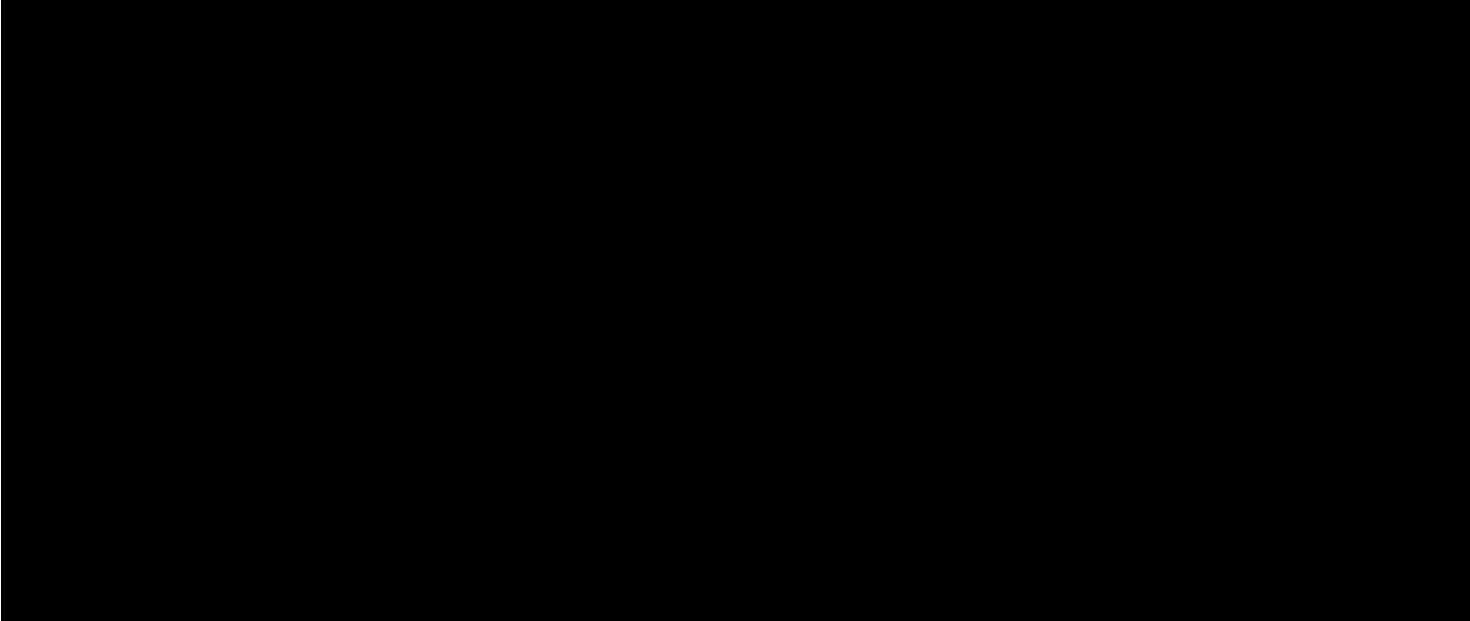


Appendix A: North Parcel LIHTC Housing Value Gap



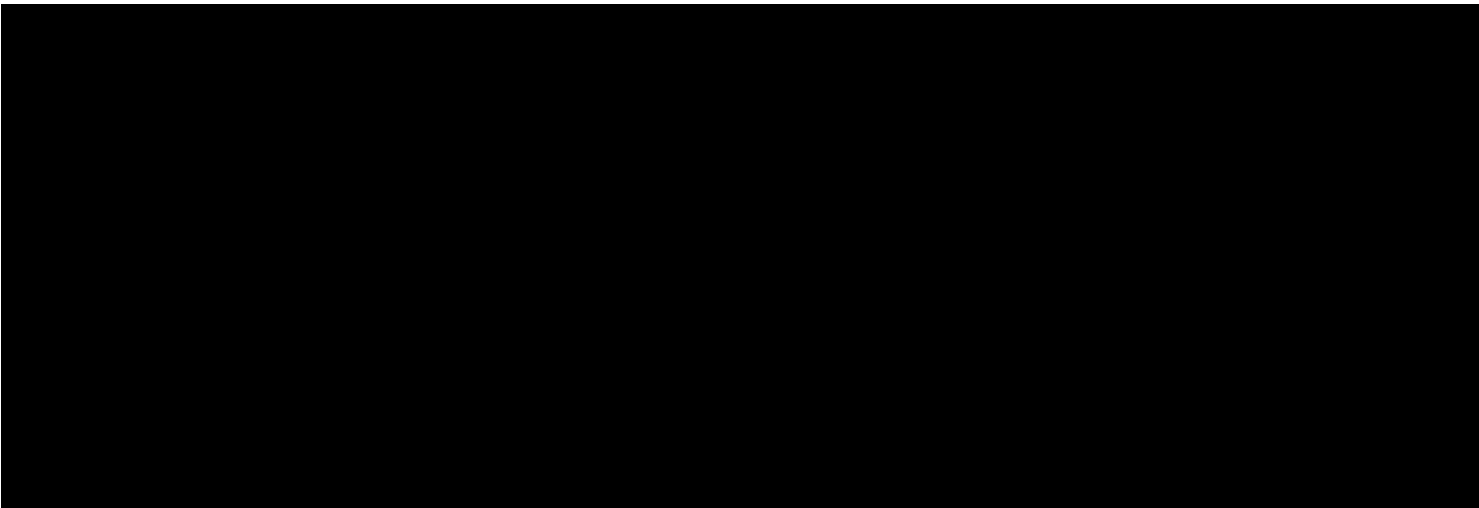
Appendix B: South Parcel IZ Value Gap

The following chart details the affordable units in the South Residential portion of the project broken up by the 8th Street Building and the 7th Street (Plaza) Building. Based on the DHCD Multi-Family Inclusionary Zoning Development chart a rent per square foot was calculated for the twelve 80% AMI affordable units in the South Residential portion of the project.



Multi-Family Inclusionary Developments

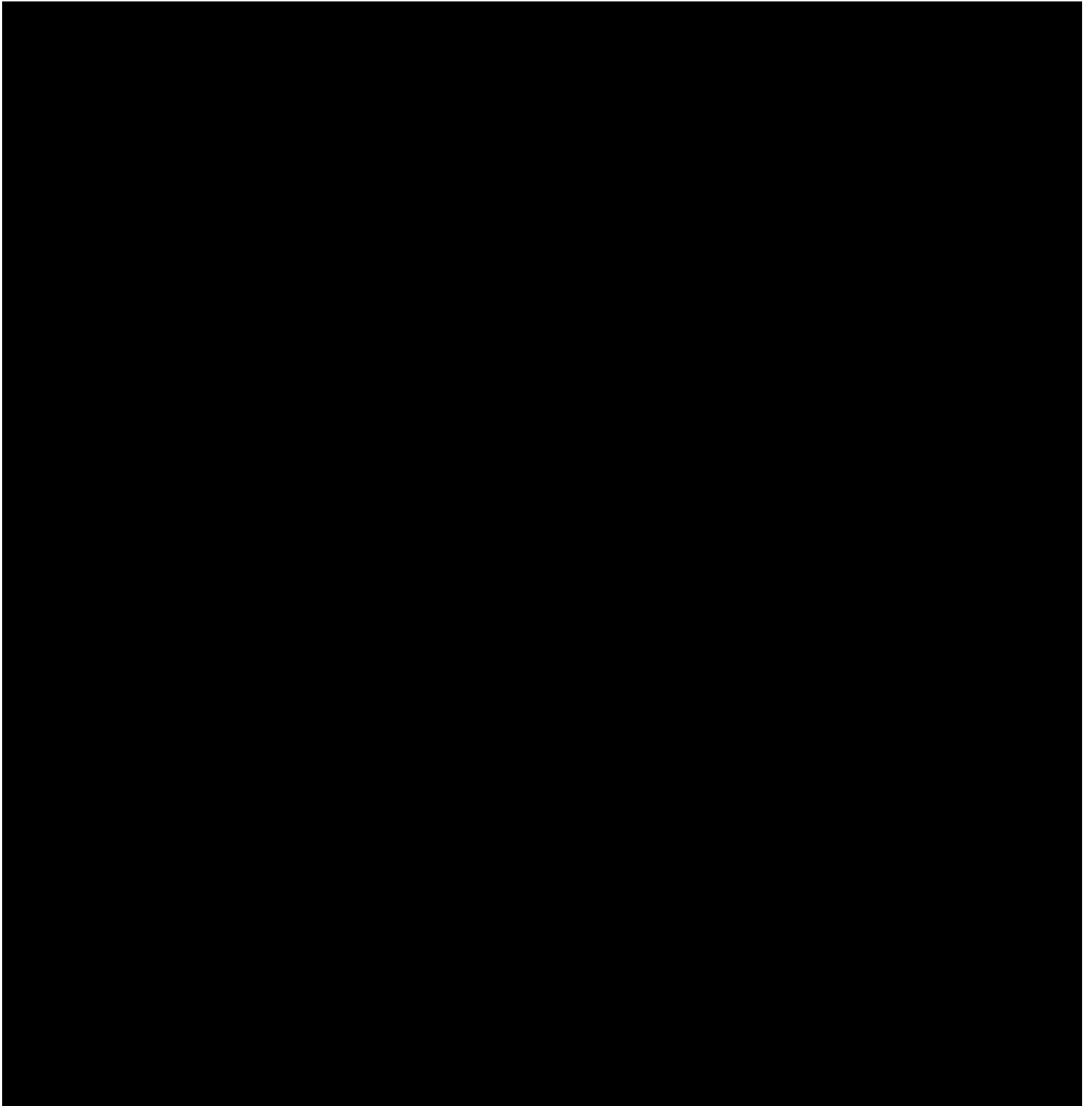
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	50% of AMI Units		80% of AMI Units	
					Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	\$127	\$250	\$941	\$128,800	\$1,505	\$227,200
1	2	1 - 2	\$173	\$313	\$1,075	\$141,300	\$1,720	\$253,800
2	3	2 - 4	\$223	\$ 425	\$1,209	\$145,200	\$1,935	\$271,700
3	5	4 - 6	\$270	\$ 525	\$1,478	\$174,600	\$2,365	\$329,300



Appendix C: Extraordinary PUD Proffers

There were four Extraordinary PUD proffers that were made after over 120 community meetings between SEB and various Hine community groups that are eligible for deduction per the Agreement. These Proffers include:

- \$75,000 for a neighborhood playground
- \$50,000 for metro plaza improvements
- \$3,000 for a neighborhood sign
- \$1,745,455 for subsidized day-care rent at the 8th Street retail building



Appendix D: C Street, Environmental, and Demo Estimates

