VINCENT C. GRAY
MAYOR

OCT - 3 2014

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council is a proposed resolution entitled the "Franklin School Disposition Approval Resolution of 2014."

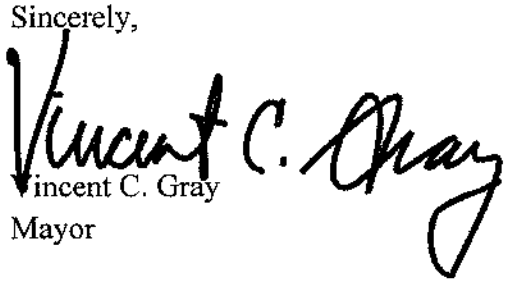
This resolution will approve the disposition of District owned real property located at 925 13th Street, N.W. ("Property") within the heart of Downtown DC. The Property, a District and federal historic landmark building, known as the Franklin School, has been vacant for several years. Approval of the proposed resolution will activate the site in coordination with Franklin Square Park which sits across the street from the Franklin School and is slated to be renovated.

The Office of the Deputy Mayor for Planning and Economic Development has selected the Institute of Contemporary Expression ("ICE-DC") and EastBanc Inc. to redevelop the Property into a mixed-use development. The proposed redevelopment project consists of rehabilitating the historic building and using it primarily as galleries for showcasing contemporary art in rotating exhibits open to the public. Secondary uses may include space for music and dance performances, poetry and other readings of literature, and educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors; a library and reading room; a restaurant; a café; a bookstore; and office space for the administration of the aforementioned uses.

The selected development team has proposed a development that will preserve the historic character of the building while also creating an innovative, cultural experience for the surrounding community and the District as a whole.

As always, I am available to discuss any questions you may have regarding this resolution. I look forward to prompt and favorable consideration of this resolution.

Sincerely,



Vincent C. Gray
Mayor

Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve the disposition of District-owned real property located at 925 13th Street, N.W., known for tax and assessment purposes as Lot 0808 in Square 0285.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Franklin School Disposition Approval Resolution of 2014".

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) "CBE Agreement" means an agreement governing certain obligations of the Transferee or the Developer under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("CBE Act"), including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a).

(2) "Certified Business Enterprise" means a business enterprise or joint venture certified pursuant to the Small, Local and Disadvantaged Business Enterprise

Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

(3) "First Source Agreement" means an agreement with the District governing certain obligations of the Transferee or the Developer pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the construction on the Property.

(4) "Property" means the real property located at 925 13th Street, N.W. known for tax and assessment purposes as Lot 0808 in Square 0285.

(5) "Lessee" means the Developer, its successor, or one of its affiliates or assignees approved by the Mayor.

Sec. 3. Findings.

(a) The Developer of the Property will be DevICE LLC (Institute for Contemporary Expression-DC and East Banc, Inc.); the Institute for Contemporary Expression-DC is registered to do business in the District with a business address of 3304 R Street, N.W., Washington, D.C. 20001 and EastBanc, Inc. is registered to do business at the address of 3307 M Street, N.W., Suite 400, Washington, D.C. 20007 (the "Developer").

(b) The Property is located at 925 13th Street, N.W. and consists of approximately 15,000 square feet of land and the building is approximately 51,000 square feet.

(c) The intended use of the Property (the "Project") is rehabilitating the historic building and using it primarily as galleries for showcasing contemporary art in rotating exhibits open to the public and any ancillary uses allowed under applicable law.

(d) The Project will contain affordable housing as described in the term sheet submitted with this resolution.

(e) The Lessee will enter into an agreement that shall require the Lessee to, at a minimum, contract with Certified Business Enterprises for at least 35% of the contract dollar volume of the Project, and shall require at least 20% equity and 20% development participation of Certified Business Enterprises.

(f) The Lessee will enter into a First Source Agreement with the District that shall govern certain obligation of the Lessee pursuant to D.C. Official Code § 2-219.03 and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment as a result of the construction on the Property.

(g) Pursuant to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et seq.*), the proposed method of disposition is a lease for a period of greater than 20 years under D.C. Code § 10-801(b)(8)(C) and as described in the term sheet submitted with this resolution.

(h) All documents that are submitted with this resolution pursuant to D.C. Official Code § 10-801(b-1) shall be consistent with the executed Memorandum of Understanding or term sheet transmitted to the Council pursuant to D.C. Official Code § 10-801(b-1)(2).

Sec. 4. Approval of disposition.

(a) Pursuant to the Act the Mayor transmitted to the Council a request for approval of the disposition of the Property to the Lessee.

(b) The Council approves the disposition of the Property.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Transmittal of resolution.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 6. Effective date.

This resolution shall take effect immediately.

DISPOSITION ANALYSIS
IN SUPPORT OF DISPOSITION OF REAL PROPERTY

Project Name:	925 13th Street, N.W.
Property Description:	Square 0285, Lot 0808 (the "Property")
Size of Property:	14,983 square foot lot
Zoning of Property:	C-4
Ward:	Ward 2
Proposed Ground Lessee:	DevICE, LLC (the "Ground Lessee" or the "Developer")

General Description of Development Program:

The proposed development will contain a rehabilitated building used primarily for galleries for showcasing contemporary art in rotating exhibits open to the public. Secondary uses may include: space for music and dance performances, poetry and other readings of literature, and educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors; a library and reading room; a restaurant; a café; a bookstore; and office space for the administration of the aforementioned uses.

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1. **Proposed Method of Disposition. DC Code § 10-801(b)(8).**

   A lease for a period of greater than 20 years. DC Official Code § 10-801(b)(8)(C).

2. **Description of efforts to dispose of Property for direct "public benefit" as described on specific government plan adopted by the Mayor or Council (e.g. Community Development Plan, the Comprehensive Plan, the Strategic Neighborhood Plan, or the Comprehensive Housing Strategy Plan).** DC Official Code § 10-801(a-2).

   a. ***Public Benefits Requested in Solicitation***

      The District is committed to maximizing community benefits for its residents. In view of this commitment, the solicitation issued for the Property requested that the respondents' proposals provide a development program that maximizes economic value to the District, improves the quality of life for the surrounding community, and advances opportunities for local residents and businesses. The solicitation described these goals more in-depth to mean that proposals should comprehensively addresses stakeholder concerns and requirements, stimulate pedestrian activity and include vibrant streetscapes, and should be sustainable developments that have minimal impact on the environment. The solicitation encouraged respondents to incorporate local hiring and opportunities for District neighborhood-based businesses to participate in the project. Examples of maximizing the overall economic benefit to the District included land value proceeds and the generation of property and sales taxes; and through maximizing community benefits, such as through providing cultural and neighborhood-serving

amenities. There was also a request by the community that the new use for the Franklin School should provide public access and should continue the historic nature of the building as an education facility.

b. Describe any Public Benefits in proposed Developer's Development Plan.

The Developer's proposed vision for the Franklin School includes rehabilitating the building and reusing it as exhibit space for contemporary art, sculpture, installations and performances. The proposed development also includes adult and student art education programs; a new restaurant; café; and an arts bookstore. Further, the Developer plans to work closely with the National Park Services ("NPS") and the District to integrate art into the redesigned Franklin Square Park and to coordinate educational programs and events in the park.

While all of the teams showed exceptional quality in their proposals and vision for the rehabilitation and reuse of the Franklin School, ICE-DC excelled for the below reasons, which were evaluation criteria outlined in the RFP:

- A proposed use that is suitable with the building's historic character
- Attainment of District policy goals, specifically by maximizing community benefits
- Development vision that:
  - Comprehensively addresses stakeholder concerns and requirements
  - Stimulates pedestrian activity and includes a vibrant streetscape
  - Provides innovative, market-viable ideas for redevelopment of the building
- Project financial feasibility and team financial capacity

A Proposed Use that is Suitable with the Building's Historic Character

The Franklin School is a landmark listed on the DC Inventory of Historic Sites. This designation provides protection of both the exterior and the interior features of the building.

ICE-DC's proposed use for the building is both innovative and respectful of the historic character of the building. First, while the other proposals required significant reconfiguration of the original design of the building for their reuse, ICE-DC's proposed use as an art exhibit space requires almost no reconfiguration of interior walls and spaces. The team plans to restore both the building's exterior and original interior details and materials. Further, the team plans to integrate the rehabilitated space into the art environment so that the public may view and enjoy the original grandeur of the building during their visits. Second, the team's proposal pays homage to the use of the building as a school by incorporating an education component into their program.

Attainment of District Policy Goals

The teams were asked to maximize the overall economic benefit to the District, improve the quality of life for the surrounding community, and advance opportunities for local residents and businesses. All of the proposals fell within a competitive range; however, the ICE-DC team maximized the value to the District through a comprehensive offer which provides both community benefits and tax revenue generation for the District.

- *Maximizing Community Benefits:*
  ICE-DC's development and operations program will provide:
  - Cultural and neighborhood-serving amenities that currently do not exist in the area.
  - Public access to the entire building for a cultural experience through contemporary art, literature, and dining.
  - A new restaurant which will feature art by local artists, offer training to students interested in pursuing a career in the culinary arts, use locally-grown products, and donate a percentage of its gross receipts to a local organization providing food to people in need.
  - For the creation of over 100 jobs to support the restaurant, café, museum and bookstore.
  - Mentoring and training programs to teach DC residents about contemporary art, curatorial practice, and how to become an artist.
- *Value to the District through property and sales taxes:*
  ICE-DC's development and operations program will provide for:
  - A nominal payment for a long-term ground lease. (A sizeable ground lease payment was not anticipated given the high cost to rehabilitate the building.)
  - The generation of possessory, sales, and payroll tax revenue. The project is anticipated to generate $126,000 annually in possessory interest taxes and $550,000 annually in sales and payroll taxes.

Development Vision

The teams were asked to propose innovative, market-viable ideas for re-use of the building. Teams who comprehensively addressed stakeholder concerns and requirements; stimulated pedestrian activity and included vibrant streetscapes were evaluated more highly.

- *Comprehensively addresses stakeholder concerns and requirements:*
  As part of its evaluation process, the Panel took into consideration the feedback it received from the community, including but not limited to, ANC 2F. The Panel's recommendation is consistent with the community feedback it received. ANC 2F provided a letter to DMPED on December 6th 2013, recommending that two teams be considered for selection based on the idea that these proposals best promoted public access to the building: (1) ICE-DC and (2) Douglas Development. The ANC letter states the following:

"ANC 2F recommends the ICE-DC proposal because, of the four proposals, an art exhibition space provides the most public access to the interior of the Franklin School, and the proposal's education component comes closest to continuing the historic nature of the Franklin School as an educational facility, and of its architect Adolf Cluss, while doing the least to disturb the building's interior. In addition, the proposed exhibition space, restaurant, and bookstore would provide welcome amenities to neighborhood residents and would facilitate pedestrian foot traffic that provides important safety benefits for the area. The ANC also believes the proposal would attract visitors to the City, would complement the renovations to the Franklin Park, and would generate economic development and tax revenues for the City. Like the Franklin School building, this proposal is unique--a contemporary art space on this scope and scale does not exist in the City (and perhaps could not exist elsewhere) and would add diversity and vibrancy to the Downtown neighborhood."

In respect to addressing stakeholder concerns and requirements, ICE-DC's proposal best meets this evaluation criterion.

- *Stimulates pedestrian activity and includes a vibrant streetscape:*
  - ICE-DC's operations program has the highest potential to stimulate both day- and night-time pedestrian activity and create a vibrant streetscape. The art institute, café and bookstore are proposed to be open Wednesday to Sunday from 10 am to 6 pm, while the restaurant is proposed to be open seven days a week for lunch and dinner.
  - ICE-DC intends to coordinate outdoor contemporary art events, activities, programs and performances in Franklin Square Park in coordination with NPS and the District, as well as integrate art into the park redesign. The timing of the renovation of Franklin Square Park in concert with the rehabilitation and re-use of the Franklin School is fortuitous. ICE-DC's proposal is the only proposal that combines the historic building with the renovation of the park to enhance the park experience for all who visit it.

- *Provides innovative, market-viable ideas for redevelopment of the building:*
  - ICE-DC provided examples of similar contemporary art venues from around the country that have had transformative effects on the local community and economy. According to the American Association of Museums, there are approximately 850 million museum visits each year to American museums, more than the attendance for all major league sporting events and theme parks combined.
  - ICE-DC's concept does not compete with existing museums and art exhibits in the District, but instead complements and enhances DC's cultural offerings. ICE-DC provided letters of support from the Phillips Collection, the National Museum

of Women in the Arts, and other contemporary art organizations in the District, to support their proposal.

c. ***Public Uses included in proposed Developer's Development Plan (such as public parks, construction of roads, sidewalks, and other public amenities).***

Currently, the Property consists of a vacant temporary structure and remains unutilized by anyone in the surrounding community. The Property is located on a street corner and creates an uninviting feel and public safety concerns. The proposed development as a contemporary art exhibit space, restaurant, café and bookstore, would allow public access into mostly all parts of the historic building, which is treasured asset of the District. Furthermore, the proposed development would provide a use for the Property that would be of benefit to the public by creating an active and well-lit streetscape, providing an improved pedestrian experience and better public safety.

3. **The chosen method of disposition, and how competition was maximized.** DC Official Code § 10-801(b-1)(1)(A).

a. ***Description of solicitation process (include form of solicitation, how solicitation was advertised).***

The Office of the Deputy Mayor for Planning and Economic Development ("DMPED") conducted a two-phase solicitation process to select a team that is capable of (a) conducting or overseeing the rehabilitation work needed at the historic Franklin School building and (b) reusing the rehabilitated building. The RFQ and RFP were posted on the website of DMPED. DMPED also sent e-mail notifications regarding the issuance of the RFQ to potentially interested parties.

b. ***Please describe the competitive bid process, including number of responses. Please also summarize each qualified bidder for the property. If no competitive process was followed, please explain why not, and how the Developer was chosen and all key terms of the arrangement.***

The solicitation for offers process engaged the broadest possible cross-section of respondents experienced and capable of creating unique urban-infill environments. An outline of the solicitation process is below:

- RFQ issued – April 10, 2013
- Pre-Response Information Session and Site Tour – April 26, 2013
- Deadline for RFQ responses – May 23, 2013 (4 responses received)
- DMPED announced that teams deemed qualified to proceed to the RFP process (all 4 responses) – July 31, 2013
- Deadline for proposals – October 2, 2013
- Community Presentation by Respondent Teams – October 30, 2013

The four development teams who submitted RFQ and RFP responses were as follows:

- CoStar Group / Abdo
- Douglas Development
- Institution for Contemporary Expression-DC (ICE-DC) / EastBanc
- Lowe Enterprises / Bundy Development

Upon an intensive review of the proposals from each responsive team, the review panel selected ICE-DC and EastBanc to exclusively negotiate with DMPED for the disposition and development of the Property. The selection was announced and award letter was issued in February 2014.

c. ***Please describe any public hearings on the potential disposition and any public comment received during the public hearings.***

The potential disposition of the property has been discussed with the public over the past ten-plus years. In 2003, 2009, and most recently in 2013, DMPED issued solicitations for a development team to redevelop the property. In 2013, DMPED participated in four ANC 2F meetings to discuss the 2013 solicitation process. Prior to issuance of the RFQ and RFP in 2013, and during the solicitation process, DMPED provided updates to the community and answered any questions regarding the potential disposition of the property. After DMPED received responses to the RFP in 2013, DMPED held a special public meeting where the four respondent teams presented a summary of their proposal to the community and answered questions from the community. From October 31 to December 6, 2013, after the respondents teams presented to the community, DMPED held a public comment period to gather feedback from the community on the proposals. During this time, ANC 2F submitted a letter to DMPED recommending that two of the four teams be considered for selection. DMPED incorporated public comments into its evaluation to select a team to be recommended for the Mayor's approval.

4. **The manner in which economic factors were weighted and evaluated, including estimates of the monetary benefits and costs to the District that will result from the disposition. The benefits shall include revenues, fees, and other payments to the District, as well as the creation of jobs.** DC Code § 10-801(b-1)(1)(B).

a. ***Identify all relevant costs, including property value for the subject and surrounding property, cost of potential rehabilitation, current and / or past cost for upkeep on the Property.***

An independent appraisal was completed in September 2014 by Chaney & Associates, Inc. They concluded that the as-is market value of the District-owned property, with First Source and CBE requirements as encumbrances to the property, equates to $7,680,000 (approximately $168 per square foot). This value assumes that the project is built per by-right zoning as a Class A office building with ground-floor retail as the highest and best uses. The appraisal provided property values for similar surrounding assets that came in at approximately $168 per FAR foot.

Out of the four proposals submitted in response to the RFP in 2013, the lowest potential rehabilitation cost was proposed by ICE-DC for their proposed development program. The development budget anticipates that the total cost would be approximately $13.2 million. With ICE-DC's proposed development program, the appraisal states that the hypothetical value of the property equates to $0. This took into account the value of the property after it has been rehabilitated and stabilized, and the total development cost. The residual value is $0.

b. ***Describe potential revenue that could be derived from the Property and how it was maximized in selected disposition method.***

ICE-DC's development and operations program will provide for a nominal payment for a long-term ground lease. Given the high cost to rehabilitate the building, a sizeable ground lease payment was not anticipated. However, by disposing of the Property for a mixed-use development that includes a new cultural institution and new retail uses, the project will generate possessory interest, sales, and payroll tax revenue. As part of DMPED's evaluation of ICE-DC's proposal, it took into consideration the number of jobs anticipated to be created by the development to support the restaurant, art institute, café, and bookstore. Over 100 jobs are anticipated to be created. The project is anticipated to generate $126,000 annually in possessory interest taxes and $550,000 annually in sales and payroll taxes.

5. **Please describe all disposition methods considered and provide a narrative of the proposed disposition method that contains comparisons to the other methods and shows why the proposed method was more beneficial for the District than the others in the areas of return on investment, subsidies required, revenues paid to the District, and any other relevant category, or why it is being proposed despite it being less beneficial to the District in any of the measured categories.** DC Official Code § 10-801(b-1)(1)(C).

A long term ground lease was the only viable option for the Franklin School building because the District has an interest in maintaining ownership of its historic assets. While the annual ground lease payment will be nominal due to the high cost to rehabilitate the building, this disposition method is efficient and effective because it allows the property to produce tax revenue for the District through sales, payroll and property taxes. In addition, the proposed project will require no additional subsidy from the District to rehabilitate a historic asset.

TERM SHEET

Disposition by Ground Lease of 925 13th Street N.W.

The Franklin School

Date	9/22/14
Ground Lessor	Government of the District of Columbia, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**") (collectively, the "**District**").
Ground Lessee	DevICE, LLC, a District of Columbia limited liability company, its successors, assigns, or affiliates, as approved by DMPED (the "**Ground Lessee**" or the "**Developer**").
Property/Leased Premises	Real property (the "**Property**" or the "**Leased Premises**") with a street address of 925 13th Street N.W. in Washington, D.C., known for tax and assessment purposes as Lot 0808 in Square 0285, more commonly known as The Franklin School.
Disposition Structure	The Property will be conveyed via a 50-year unsubordinated ground lease (the "**Ground Lease**") by the District to the Ground Lessee under D.C. Official Code § 10-801(b)(8)(C) pursuant to a Land Disposition Agreement (by Ground Lease) (the "**LDA**").
Consideration/Rent	Nominal consideration shall be paid by Ground Lessee at Closing. Base rent shall be $1.00 per annum.
Project	The Leased Premises shall be used for the rehabilitation and reuse of the historic Franklin School, consistent with the permitted uses, pursuant to terms set forth in the Ground Lease.
Permitted Uses	The Leased Premises shall be used primarily for galleries for showcasing contemporary art in rotating exhibits open to the public. Secondary uses may include: space for music and dance performances, poetry and other readings of literature, and educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors; a library and reading room; a restaurant; a café; a bookstore; and office space for the administration of the permitted uses.

Conditions of Closing	In addition to the other District standard conditions of Closing, the District's obligation to lease the Property to Ground Lessee will be conditioned on: • DMPED shall have approved the Ground Lessee's budget and financing plan, and the Project plans and specifications. • The Developer shall have obtained the financing necessary to fund the development of the Project. • The Developer shall have provided a development and completion guaranty to the satisfaction of DMPED. • Such other conditions to Closing as may be required by DMPED consistent with the LDA.
Green Building Requirements	Developer shall construct the Project in compliance with the Green Building Act of 2006, D.C. Official Code §§ 6-1451.01 *et seq.* (2012 Supp.), as amended.
Schedule of Performance	Below is the schedule of performance with target dates, which may be amended or extended with the approval of DMPED, as further provided in the LDA:
	Closing (including execution of the Ground Lease): 19 months after Effective Date of the LDA
	Commencement of Construction: 2 months after Closing under the LDA
	Substantial Completion of Construction: 12 months after Closing under the LDA
Post-Closing Requirements	The Developer shall be bound by the requirements of the Construction and Use Covenant, the Ground Lease, the CBE Agreement, and the First Source Agreement.
Certified Business Enterprise Requirements	The Developer shall enter into an agreement that shall require the Developer to, at a minimum, contract with Certified Business Enterprises for at least 35% of the contract dollar volume of the Project, and shall require at least 20% equity and 20% development participation of Certified Business Enterprises.
First Source Requirements	The Developer shall enter into a First Source Agreement with the Department of Employment Services that shall govern certain obligations of the Developer pursuant to D.C. Official Code §§ 2-219.03, as amended, and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the construction on the Property.

INTENTION AND LIMITATIONS OF THIS TERM SHEET

1. The Developer and DMPED acknowledge that they have prepared and signed this Term Sheet for the sole purpose of obtaining the approval of the Council of the District of Columbia (the "**Council**") to the proposed transaction. The Developer acknowledges that DMPED's negotiation of the LDA and this Term Sheet, DMPED's signature on this Term Sheet, and submission of this Term Sheet and supporting documents to the Council shall not bind the District or Developer to execute the LDA or to convey or lease the Property to the Developer. The Developer further acknowledges that, notwithstanding Council authorizing the conveyance or lease of the Property, the Developer and the District have no obligation to do so absent the District and the Developer duly executing the LDA and satisfaction of the conditions contained therein. In the event DMPED or the Mayor determine, in their sole and absolute discretion, to withhold submission of this Term Sheet and supporting documents to the Council or to otherwise decline to secure Council authorization for the conveyance, Developer and DMPED may each terminate negotiations with the other and the District shall not be responsible for the Developer's costs and expenses incurred in relation to the Property or the Project; provided that DMPED shall return to Institute for Contemporary Expression the $100,000 letter of credit that it posted in connection with its response to DMPED's Request for Proposals for development of the Property (the "**Deposit**".)

2. The Developer acknowledges that all approvals required of the Council will be granted or withheld in the sole and absolute discretion of the Council and that, absent Council approval of the proposed transaction, DMPED has no authority to convey the Property to the Developer, and Developer has no obligation to purchase the Property from DMPED. The Developer acknowledges that it is entering into this Term Sheet prior to obtaining all necessary Council approvals. In the absence of such approvals and execution of the LDA, the Developer proceeds at its sole risk and expense with no recourse whatsoever against the District, other than the return of the Deposit.

IN WITNESS WHEREOF, DMPED and Ground Lessee have caused this Term Sheet dated 9/22, 2014 to be executed by their respective duly authorized representatives.

DISTRICT:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
M. Jeffrey Miller,
Interim Deputy Mayor for Planning and Economic Development

GROUND LESSEE AND DEVELOPER:

DevICE, LLC, a District of Columbia limited liability company

By: IDEARTS, LLC, a District of Columbia limited liability company, Member

By: _____

Name: Daniel Levinas

Title: Managing Member

By: EastBanc, Inc., a District of Columbia corporation, Member

By: Philippe Lanier

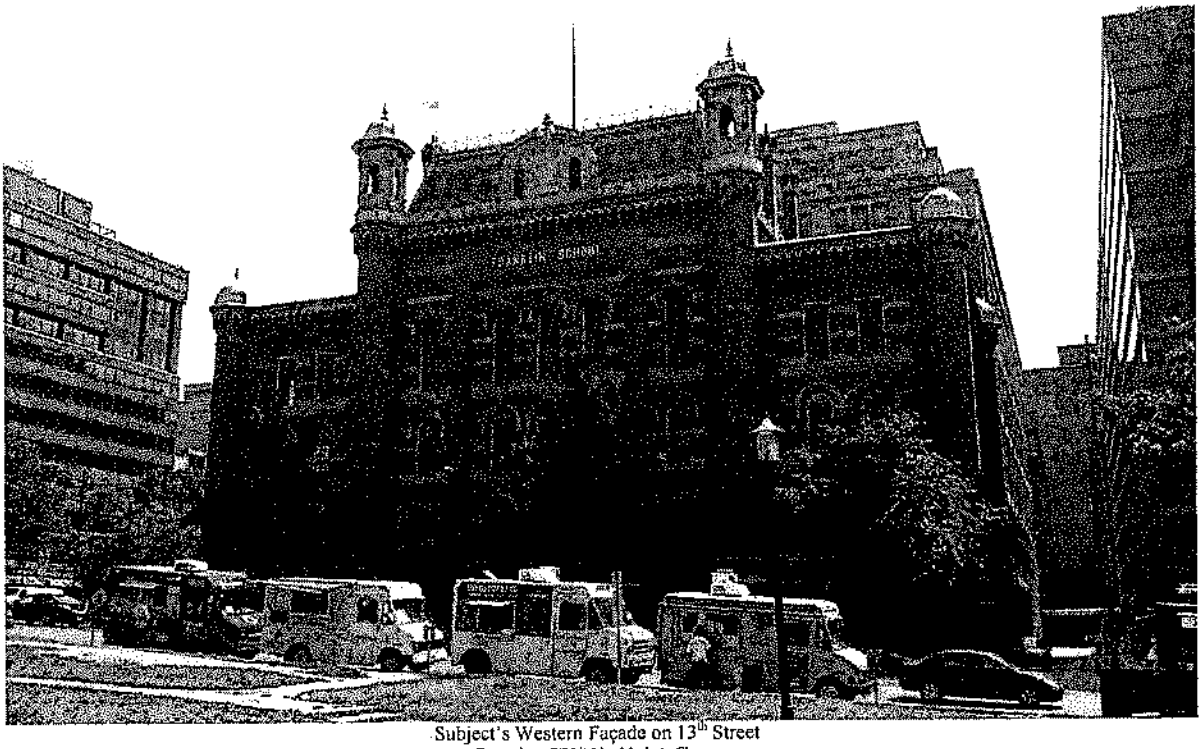
Name: Vice President

Title: _____

CHANEY & ASSOCIATES
Commercial Real Estate and Business Valuation

An Appraisal of:

The Franklin School
925 13th Street NW, Washington, DC 20005



Subject's Western Façade on 13th Street
Date taken 7/23/14 by Mark A. Chaney

Prepared for:

District of Columbia Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue NW, Suite 317, Washington, DC 20004

Prepared by:

Gregory M. Zehe and Mark A. Chaney, MAI
Chaney & Associates, Inc.
8508 White Post Court, Potomac, Maryland 20854

Effective Date:

July 23rd, 2014

111 Cathedral Street, Suite 202, Annapolis, MD 21401
8508 White Post Court, Potomac, MD 20854
Tel 301.365.1285 ♦ Fax 301.365.1286
E-mail Mark.Chaney @ CAI-value.com

September 23rd, 2014

District of Columbia Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue NW, Suite 317
Washington, DC 20004

Re: *The Franklin School* - 925 13th Street NW, Washington, DC 20005 (Census Tract 51)

Dear DC Office of the Deputy Mayor for Planning and Economic Development,

In response to the July 16th, 2014 request for an appraisal (with all applicable approaches) of the above captioned property, the following report is prepared in conformance with the 2014-2015 Edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP), and the 2000 Edition of the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA).

The referenced subject consists of ±14,938 square feet (SF) of land improved with a ±45,690 Gross Square Foot (GSF) 6-story historic masonry school building originally constructed circa 1869. The property is historically designated by the National Park Service (NPS) and the District of Columbia. The underlying site, identified as Lot 808 in Square 285, is zoned C-4 with no overlay. Owned by the District of Columbia, the property is proposed for redevelopment with ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore. Due to the school's historic designation, the exterior of the building cannot be substantially altered, nor can a majority of the interior. In addition, any development/redevelopment of the property will be subject to the First Source Agreement (FSA) and the Certified Business Enterprise (CBE) programs. The highest and best use of the subject is renovation of the existing improvements (due to their historic designation, the vertical improvements cannot be razed) for office and ground floor retail use.

The purpose of this appraisal is to provide the subject's its *market value as is* (encumbered by FSA and CBE requirements); and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances). In concluding to the value opinions required for this appraisal assignment, we have considered all pertinent market data and the actions of market participants knowledgeable of comparable properties. There are no known jurisdictional exceptions, special or legal instructions, and a representative of property ownership accompanied us at the inspection.

Based upon our analyses, the *market value as is* (encumbered by FSA and CBE requirements) equates to **$7,680,000**; and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances)

equates to **$0**. The values reflect the fee simple estate as of July 23rd, 2014 (the date of the most comprehensive inspection). Attached hereto is the analyses and reasoning for the opinions of value. Any separation of the signature pages from the balance of the report invalidates the conclusions.

Respectfully submitted,

Digitally signed by Mark A. Chaney
DN: cn=Mark A. Chaney, o=Chaney & Associates, Inc., ou=President, email=Mark.Chaney@CAI-value.com, c=US
Date: 2014.09.23 15:50:44 -04'00'

Mark A. Chaney, MAI

Gregory M. Zehe

EXECUTIVE SUMMARY

Property Description - The subject is *The Franklin School* at 925 13th Street NW, Washington, DC 20005. The property consists of ±14,938 SF of land improved with a ±45,690 SF 6-story historic masonry school building constructed circa 1869. The property is historically designated by the NPS and the District of Columbia. The underlying site, identified as Lot 808 in Square 285 is zoned C-4, with no overlay. Owned by the District of Columbia, the property is proposed for redevelopment with ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances). Due to the school's historic designation the exterior of the existing building cannot be substantially altered, nor can a majority of the interior.

Purpose of Appraisal - To provide the subject's *market value as is* (encumbered by FSA and CBE requirements); and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances).

Date of Valuation - July 23rd, 2014.

Property Rights - The fee simple estate.

Market Brief - The DC regional office market has a current vacancy rate of 14.8%, with the East End (see map on page 16) *Class A* market having a vacancy rate of 10.2%. Absorption has been ostensibly positive, keeping pace with deliveries. Since late 2011, East End inventory has only increased by ±2.7%, while an additional 1.7% of *Class A* inventory is currently under construction. Projections for the near-term included slow growth, declining vacancy rates and continuation of recent trends.

Highest and Best Use - As if vacant, *Class A* office construction with street level retail. As improved, given the historic restrictions, renovation of the existing improvements for office and ground floor retail use.

Market Value - Based upon our analyses, the *market value as is* (encumbered by FSA and CBE requirements) equates to **$7,680,000**; and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances) equates to **$0**.

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Scope of the Appraisal:

The scope of this assignment, as identified in our engagement (see Addenda), was to provide the subject's *market value as is* (encumbered by FSA and CBE requirements) and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances). This is done via an appraisal (utilizing all applicable approaches) prepared in conformance with the 2014-2015 Edition of the USPAP and the 2000 Edition of the UASFLA.

The period that data was investigated was July 16th, 2014 to the date of this report. The date of most comprehensive physical inspection was July 23rd, 2014. In preparing the value estimates, we considered the pertinent market data and the recent actions of market participants knowledgeable of comparable properties. The information regarding the subject was derived from inspection, public records, data provided by other published resources, and the ownership representative.

As the subject is located within the District of Columbia's East End Submarket, this area was investigated along with the broader District of Columbia and region. Information taken into account included comparable sales, cost data, and investment parameters. Sources used to collect and verify data included *CoStar*, public records and officials, developers, broker/agents, lending institutions, attorneys, and various published data pertinent to the subject's real estate market. This thorough investigation into the factors that influence value on the subject was deemed reasonable to justify the value opinions rendered.

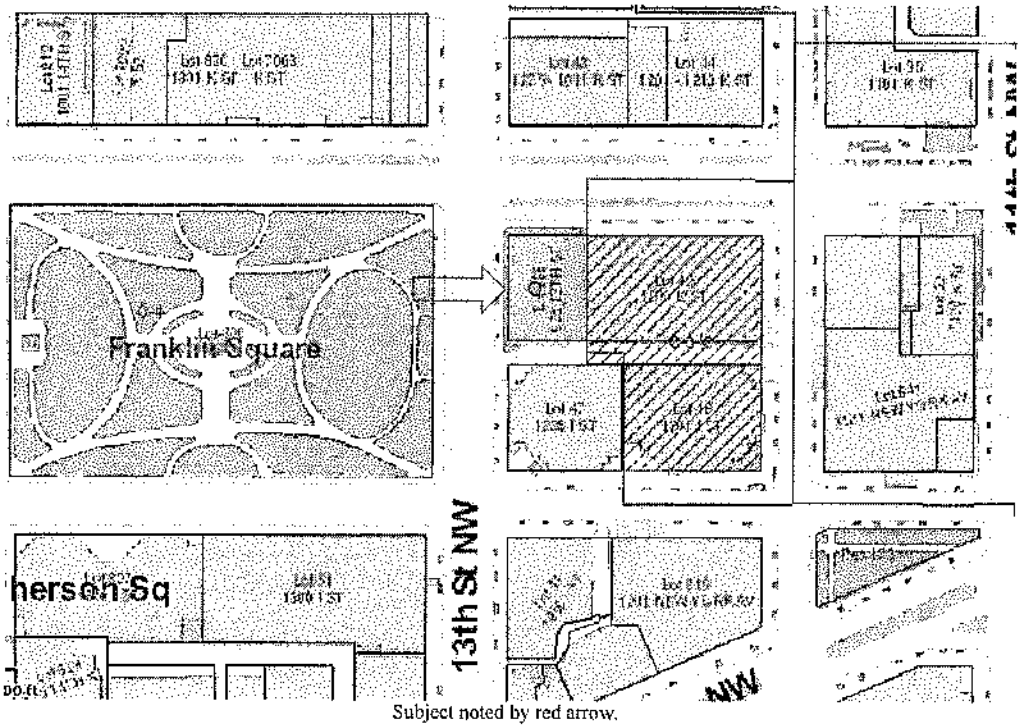
The valuation of the subject was accomplished using the sales comparison approach for the *market value as is* and a residual analysis (employing elements of both the income capitalization and cost approaches) for the *hypothetical* value. Due to the age and historic status of the subject improvements, the cost approach was not deemed directly applicable; however, elements of this approach were considered in our adjustment process. As the subject is a vacant school needing to be stripped to shell condition and renovated prior to future use, direct application of the income capitalization approach was not applicable given the lack of specific development plans at this juncture.

Identification of the Property:

The subject is *The Franklin School* at 925 13th Street NW, Washington, DC 20005. The property consists of ±14,938 SF of land improved with a ±45,690 SF 6-story historic masonry school building constructed circa 1869. The property is historically designated by the NPS and the District of Columbia. The underlying site, identified as Lot 808 in Square 285 is zoned C-4, with no overlay. Owned by the District of Columbia, the property is proposed for redevelopment with ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances). Due to the school's historic designation the exterior of the existing building cannot be substantially altered, nor can a majority of the interior.

The subject is within Ward 2 and Neighborhood Cluster 8 of the District of Columbia. A legal description, provided by the District of Columbia from a 2013 title report, follows:

> Lots 14, 15, 16 and 17 in Square 285 in the subdivision recorded in Book NK at page 83 of the Records of the Office of the Surveyor for the District of Columbia. NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 808 in Square 285.



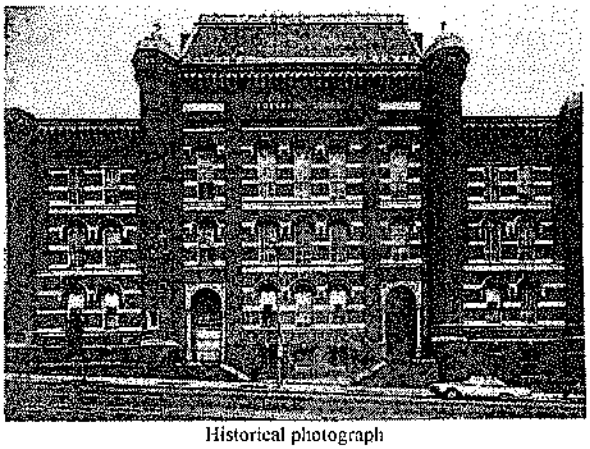
Subject noted by red arrow.

There is no personal property or other items that are not real property associated with the value opinions in this report.

Ownership and History of the Property:

Based on a 2013 title report provided to the District of Columbia, the subject is owned by the District of Columbia and has been since 1869 or before. Reportedly, the *Franklin School* was the finest of the half-dozen schools initiated in the 1860s by Mayor Richard Wallach, who intended to improve the quality of public education in the capital. The *Franklin School* reflected German-born Adolph Cluss' knowledge of school building architecture in Europe as well as in the United States. At its completion, the *Franklin School* was considered unsurpassed in its accommodation of educational functions and as a model of good taste. In the *Franklin School*, Cluss combined elements of Second Empire style with the Rundbogentsil, or Round Arch style, which he learned in his native Germany. The school was constructed of red brick and trimmed in stone and cast iron. Octagonal towers flanking the central pavilion served as ventilating shafts. The vertical elements of towers, long windows, and pilaster strips are balanced by bold horizontal strips connecting windows on each floor, heavily articulated corbelled brick at the cornice line, and flat

roofs over the end pavilions. A polychromatic slate-covered mansard roof over the broad center, which carries elaborate cast-iron cresting, crowns this rare Victorian survivor on Franklin Square. The *Franklin School,* declared a historic landmark in 1973, was named for Benjamin Franklin who had clearly understood and advocated the absolute necessity of universal public education for the success of the young nation. Previous use as a school continued through to circa 1913, and transitioned to administrative offices for the Board of Education and other governmental agencies through the years. The property is currently vacant and reportedly has been for several years.



Historical photograph

To the best of our knowledge, no sales contracts, options, or listings of the subject are known to have occurred within the last 10 years.

Purpose of the Appraisal:

To provide the subject's *market value as is* (encumbered by FSA and CBE requirements); and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances).

Intended Use/User of the Appraisal:

The intended use of this appraisal is for asset management. The intended user of this report is the District of Columbia Office of the Deputy Mayor for Planning and Economic Development.

Property Rights Appraised:

The fee simple estate.

Date of Value Estimates:

July 23rd, 2014

Definitions:

Market Value [1]

The major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined.

3. The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States: The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

   - Buyer and seller are typically motivated;
   - Both parties are well informed or well advised, and acting in what they consider their best interests;
   - A reasonable time is allowed for exposure in the open market;
   - Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
   - The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (12 C.F.R. Part 34.42(g); 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994)

Only that applicable to the subject is provided.

As Is Market Value [2]

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Proposed Interagency Appraisal and Evaluation Guidelines, OCC-4810-33-P 20%)

Fee Simple Estate [3]

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Hypothetical Condition [4]

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic

[1] Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute), 2010.
[2] Ibid.
[3] Ibid.
[4] Ibid.

characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Assumptions and Limiting Conditions:

- No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
- The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
- Responsible ownership and competent property management are assumed.
- The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- All engineering studies are assumed to be correct. The plot plans and illustrative material in this report are included only to help the reader visualize the property.
- It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless nonconformity has been identified, described, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the opinion of value contained in this report is based.
- It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the subject described and that there is no encroachment or trespass unless noted in the report.
- Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed. We have no knowledge of the existence of such materials on or in the property. We, however, are not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required discovering them. The intended user is urged to retain an expert in this field, if desired.
- Any allocation of the total value estimated in this report between the land and the improvements applies only under the stated program of utilization. The separate values allocated to the land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
- Possession of this report, or a copy thereof, does not carry with it the right of publication.
- We, by reason of this appraisal, are not required to give further consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or the firm with which they are connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
- Any opinions of value provided in the report apply to the entire property and any prorating or division of the total into fractional interests will invalidate the opinion of value, unless such prorating or division of interests has been set forth.
- If only preliminary plans and specifications were available for use in the preparation of this appraisal; the analysis is subject to a review of the final plans and specifications when available and arrangements have been previously made.
- We assume that the user of this report has been provided with copies of available building plans and all leases and amendments, if any, that encumbers the property.
- The forecasts, projections, or operating estimates contained herein are based on current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes with future conditions.
- The Americans with Disabilities Act (ADA) became effective January 26th, 1992. We have not made a specific compliance survey or analysis of the property to determine whether or not it is in conformity with the various detailed requirements of ADA. It is possible that a compliance survey of the property and a detailed analysis of

the requirements of the ADA would reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative impact upon the value of the property. Since we have no direct evidence relating to this issue, possible noncompliance with the requirements of ADA was not considered in estimating the value of the property.

National Economy:

The Conference Board's[5] Leading Economic Index (LEI) for the U.S. increased 0.3%, the Coincident Economic Index (CEI) increased 0.2%, and the Lagging Economic Index (LAG) increased 0.5% in June.

- The LEI for the U.S. increased for the 5th consecutive month in June. The positive contributions from the financial and new orders components more than offset declines in building permits and the labor market indicators. In the first half of this year, the LEI increased 2.7% (±5.5% annual rate), slower than the growth of 3.5% (±7.2% annual rate) during the second half of 2013. In addition, the strengths among the leading indicators continue to be more widespread than the weaknesses.
- The CEI for the U.S., a measure of current economic activity, also increased in June. The index rose 1.3% (±2.6% annual rate) between December 2013 and June 2014, slightly faster than the growth of 1.0% (±2.1% annual rate) for the previous 6 months. However, the strengths among the coincident indicators have remained very widespread, with all components advancing over the past 6 months. The LAG continued to increase, but at a higher rate than the CEI; as a result, the coincident-to-lagging ratio has declined.
- The LEI for the U.S. has been increasing since February and its 6-month growth rate has remained steady in the past several months. Meanwhile, the CEI for the U.S. has also been rising slowly through June, and its 6-month growth rate has picked up slightly over the recent 6 months. Taken together, the current behavior of the composite indexes and their components suggests that the contraction in economic growth in the 1st quarter should be short-lived and economic activity will continue expanding into the second half of the year.

Six of the 10 indicators that make up the LEI for the U.S. increased in June. The positive contributors – beginning with the largest positive contributor – were the interest rate spread, the Leading Credit Index (inverted), stock prices, the ISM new orders index, manufacturers' new orders for non-defense capital goods excluding aircraft, and manufacturers' new orders for consumer goods and materials. The negative contributors – beginning with the largest negative contributor – were building permits, average weekly manufacturing hours and average weekly initial claims for unemployment insurance (inverted). The average consumer expectations for business conditions held steady in June. The LEI for the U.S. now stands at 102.2 (2004=100). Based on revised data, this index increased 0.7% in May and increased 0.3% in April. Over the

[5] The Conference Board is the premier business membership and research network founded in 1916. It disseminates knowledge about management and the marketplace to help businesses strengthen their performance and better serve society. Working as a global, independent membership organization in the public interest, they conduct research, convene conferences, make forecasts, assess trends, publish information and analysis, and bring executives together to learn from one another. The Conference Board is a not-for-profit organization and holds 501 (c) (3) tax-exempt status in the United States.

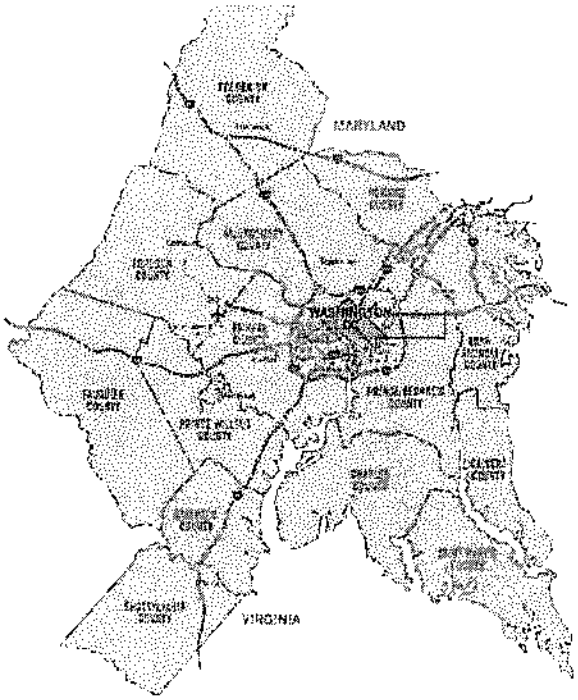
6-month span through June, the LEI increased 2.7%, with 7 out of 10 components advancing (diffusion index, 6-month span equals 70%).

All 4 indicators that make up the CEI for the U.S. increased in June. The positive contributors to the index – beginning with the largest positive contributor – were employees on non-agricultural payrolls, personal income less transfer payments, industrial production, and manufacturing and trade sales. The CEI now stands at 109.2 (2004=100). Based on revised data, this index increased 0.3% in May and increased 0.2% in April. During the 6-month period through June, the CEI increased 1.3%, with all 4 components advancing (diffusion index, 6-month span equals 100%).

The LAG stands at 124.4 (2004=100) in June, with 5 of its 7 components advancing. The positive contributors to the index – beginning with the largest positive contributor – were commercial and industrial loans outstanding, the average duration of unemployment (inverted), the ratio of consumer installment credit to personal income, the ratio of manufacturing and trade inventories to sales, and the change in index of labor cost per unit of output, manufacturing. The only negative contributor was the change in CPI for services. The average prime rate charged by banks held steady in June. Based on revised data, the LAG increased 0.3% in May and increased 0.4% in April.

Regional Data:

The subject is located within Greater Washington, as defined by the *Greater Washington Board of Trade*. The following map depicts this area.



Spanning a growing regional footprint beyond the District of Columbia proper, Greater Washington also includes Northern Virginia and Suburban Maryland. Combined, the region has a population of nearly 6.3 million.

Given the region's significant federal presence, Greater Washington has a remarkably resilient economy, a vibrant and innovative private sector, the country's most educated workforce, and extensive global connectivity. While other communities continue to recover from the economic downturn, Greater Washington is one of the country's most economically successful regions. However, the sustained vibrancy of Greater Washington's private sector remains key to the region's success. During the past decade, tremendous growth in the business and professional services sector has helped fuel phenomenal employment increases throughout the region. The Greater Washington area is aggressively embracing industries that promise to fuel continued diversity and prosperity.

Since 2006, the regional economy has grown by nearly 7.5% on an inflation-adjusted basis. No other major metropolitan area in the United States enjoyed a greater level of economic growth during this period. In fact, Greater Washington's economy outperformed most other major metropolitan regions by more than 2 percentage points. A decade of consistent, solid growth has made Greater Washington one of the country's most important economic powerhouses. Between 2001 and 2011, the region added 275,000 jobs. Over the past decade, 6 of the top 10 major metropolitan areas experienced net declines in employment. Historically, Greater Washington's unemployment rate has remained 2 percentage points below the national average. In recent years, the difference has become even more pronounced.

The region is home to 20 *Fortune 500* company headquarters, and in recent years has established itself as an epicenter for multinational corporate headquarters. During the past decade, no other metropolitan area in the country has been as successful in recruiting corporate headquarters relocations. Since 2008, five new corporate headquarters - CSC, Volkswagen Group of America, Hilton Worldwide, SAIC, and Northrop Grumman - have moved here, more than anywhere else in the country. The Greater Washington area has more *Inc. 500* fastest-growing private businesses than any other region in the country, a title the region has held for the past 15 consecutive years. In 2011, 56 Greater Washington firms were recognized on the *Inc. 500* list, more than 10% of the nation's total.

Companies here are better equipped to generate both innovation and wealth thanks to an unsurpassed concentration of highly trained, sophisticated workers. The ability of this workforce to create value is reflected in the region's income levels. Greater Washington has the highest median household income in the United States. At $86,000, the median income is nearly 20% higher than any other major metropolitan region. With 22% of the region's workforce having a graduate or professional degree, and 48% with a bachelor's degree, Greater Washington is first among the nation's major metropolitan areas.

Every jurisdiction of the area shares the region's highly-educated workforce. According to the United States Census Bureau, the region is home to 6 of the top 10 most highly educated counties in the nation, providing companies with a broad range of location options unmatched anywhere else in the United States. With one of the world's greatest concentrations of research

institutions, radical improvements are driven across a wide array of industries and disciplines. In 2011 alone, research and development spending in Greater Washington universities and colleges exceeded $3.5 billion, placing the region first in the United States.

Among United States metropolitan areas with at least 500,000 workers, Greater Washington has the country's highest concentration of Business & Financial, Legal, and Management occupations. Greater Washington ranks second in the proportion of Computer & Mathematical Sciences and Arts, Design, Entertainment, and Sports & Media occupations.

Greater Washington is very international, foreign-born residents represent more than 20% of the total population. During the past decade, the local foreign-born population has grown by 47%, a faster rate of growth than the overall national average of 28%. Since 2000, the 391,000 new foreign-born residents accounted for more than half of the region's net population increase. Among all major metropolitan regions in the United States, Greater Washington's immigrant workforce is the most highly educated: 41% hold a bachelor's degree, and 20% possess a graduate or professional degree.

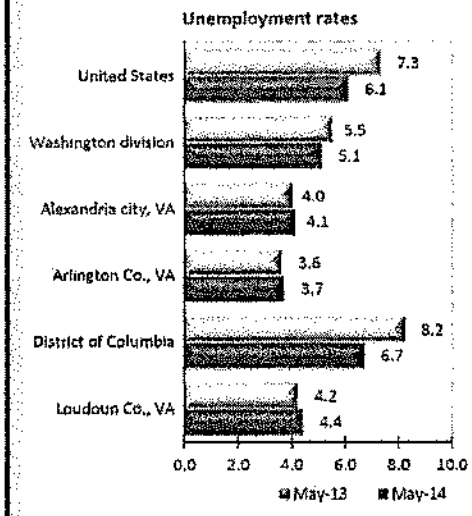
While the Federal Government continues to provide the region with a stable economic foundation, in recent years the region has emerged as one of the country's leaders in Professional & Business Services. This sector employs nearly 1 in 4 workers in the region. The result is a regional economy increasingly fueled by private-sector growth. Forty years ago, the Federal Government directly employed ⅓ of the workforce; the Federal Government now represents less than 13% of the region's employment. Other industries, including Aerospace, Defense & Intelligence, Biotechnology & Life Sciences, Energy Efficiency & Sustainability, Information & Communication Technology, Trade & Logistics, and Leisure & Hospitality continue to contribute to the growth of Greater Washington's private sector.

Greater Washington is one of the only metropolitan regions in the United States with 3 world-class airports: Washington Dulles International Airport (IAD), Baltimore/Washington International Thurgood Marshall Airport (BWI), and Ronald Reagan Washington National Airport (DCA). Private expenditures on expanded air service are backed by a significant public commitment to infrastructure investment. Since 2001, more than $3 billion has been invested in regional airport improvements.

Additionally, work continues on the largest mass transit project in the United States, a multi-billion dollar, 23-mile extension of the Metrorail system. Scheduled for completion in 2018, the new Silver Line will not only link central Washington DC with IAD, but also help accommodate further development of Tyson's Corner, the nation's 12th largest employment center.

The following is a July 1st, 2014 economic snapshot of the Washington, DC-VA-MD-WV area from the U.S. Bureau of Labor Statistics.

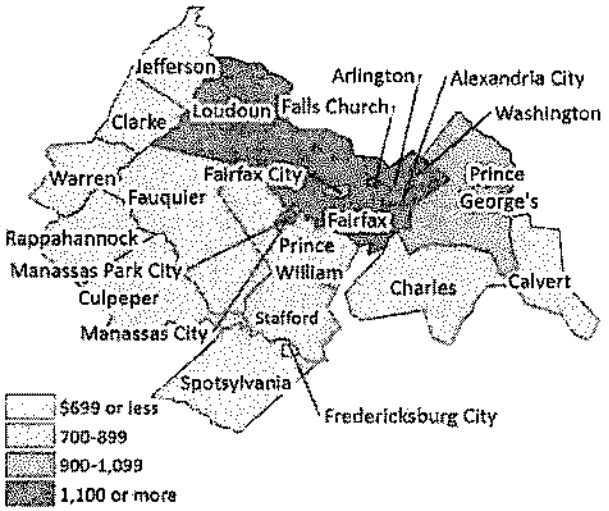
Unemployment rates for the Washington division, selected area counties, and the nation



Source: U.S. BLS, Local Area Unemployment Statistics.

Average weekly wages for all industries by county

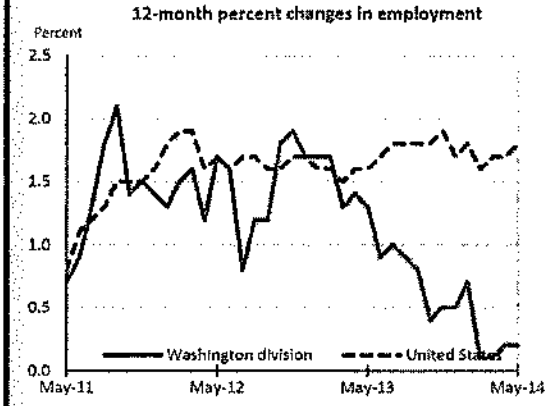
Washington division, 4th quarter 2013
(U.S. = $1,000; Area = $1,350)



Source: U.S. BLS, Quarterly Census of Employment and Wages.

Over-the-year changes in employment on nonfarm payrolls and employment by major industry sector

12-month percent changes in employment

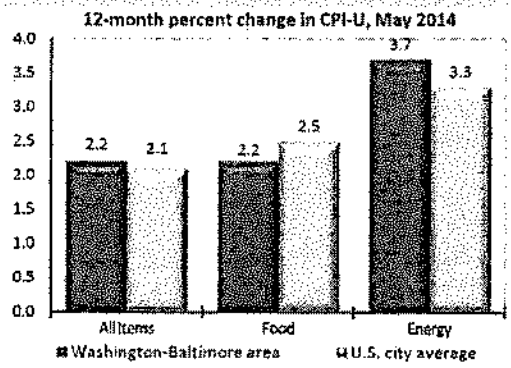


Source: U.S. BLS, Current Employment Statistics.

Washington division employment (numbers in thousands)	May, 2014	Change from May, 2013 to May, 2014	
		Number	Percent
Total nonfarm	2,520.7	5.1	0.2
Mining, logging, and construction	115.6	1.7	1.5
Manufacturing	30.3	-2.1	-6.5
Trade, transportation, and utilities	315.0	4.2	1.4
Information	60.6	-1.6	-2.6
Financial activities	114.4	3.5	3.2
Professional and business services	580.2	-4.4	-0.8
Education and health services	314.3	3.5	1.1
Leisure and hospitality	250.0	6.6	2.7
Other services	159.0	-0.1	-0.1
Government	581.3	-6.2	-1.1

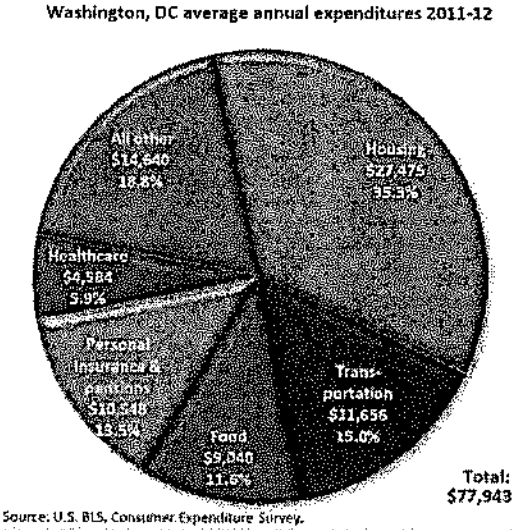
Source: U.S. BLS, Current Employment Statistics.

Over-the-year change in the prices paid by urban consumers for selected categories



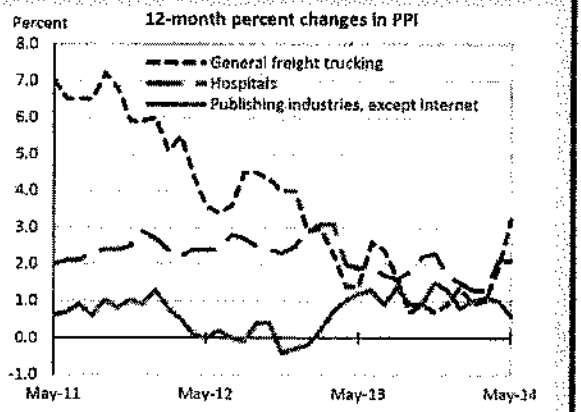
Source: U.S. BLS, Consumer Price Index.

Average annual spending and percent distribution for selected categories



Source: U.S. BLS, Consumer Expenditure Survey.

Over-the-year changes in the selling prices received by producers for selected industries nationwide



Source: U.S. BLS, Producer Price Index.

Average hourly wages for selected occupations

Occupation	Washington division	United States
Total, all occupations	$31.37	$22.33
Lawyers	75.70	63.46
Political scientists	52.62	48.51
Computer systems analysts	51.34	41.02
Public relations specialists	47.81	30.30
Statisticians	46.21	40.05
Budget analysts	42.72	34.89
Accountants and auditors	40.82	34.86
Registered nurses	35.74	33.13
Editors	35.06	30.20
Construction laborers	15.93	16.84
Retail salespersons	12.12	12.20
Cooks, fast food	9.49	9.07

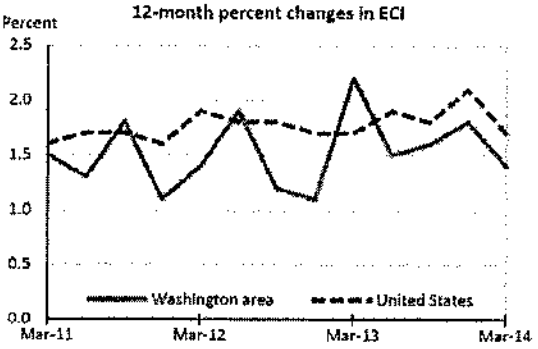
Source: U.S. BLS, Occupational Employment Statistics, May 2013.

Employer costs per hour worked for wages and selected employee benefits by geographic division

Private industry, March 2014	South Atlantic (1)	United States
Total compensation	$27.98	$29.99
Wages and salaries	19.95	20.96
Total benefits	8.03	9.03
Paid leave	1.96	2.09
Vacation	1.02	1.08
Supplemental pay	0.73	0.85
Insurance	2.17	2.50
Retirement and savings	0.97	1.15
Legally required benefits	2.20	2.44

(1) South Atlantic includes DC, DE, FL, GA, MD, NC, SC, VA, and WV.
Source: U.S. BLS, Employer Costs for Employee Compensation.

Over-the-year changes in wages and salaries

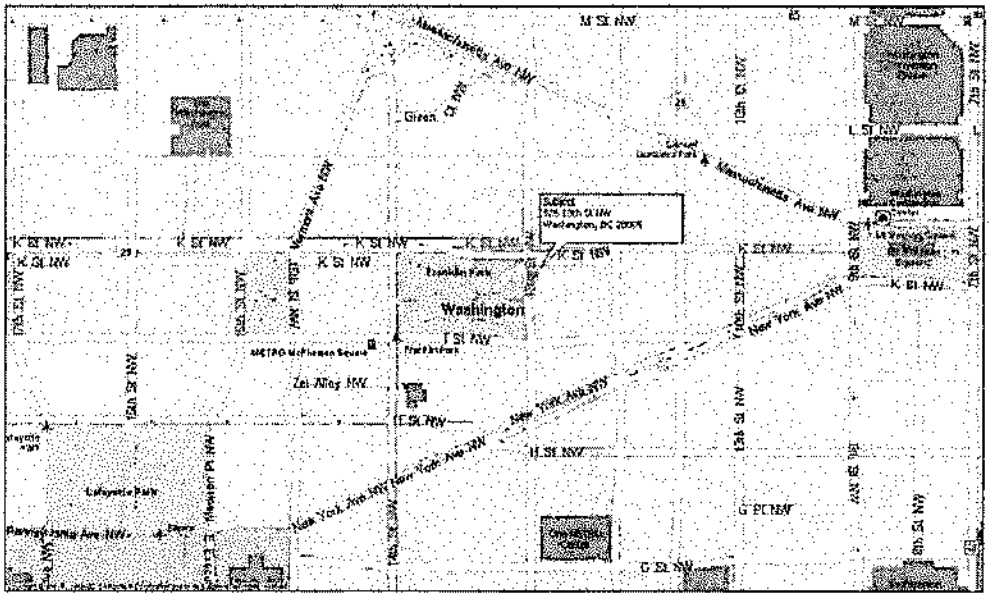


Source: U.S. BLS, Employment Cost Index.

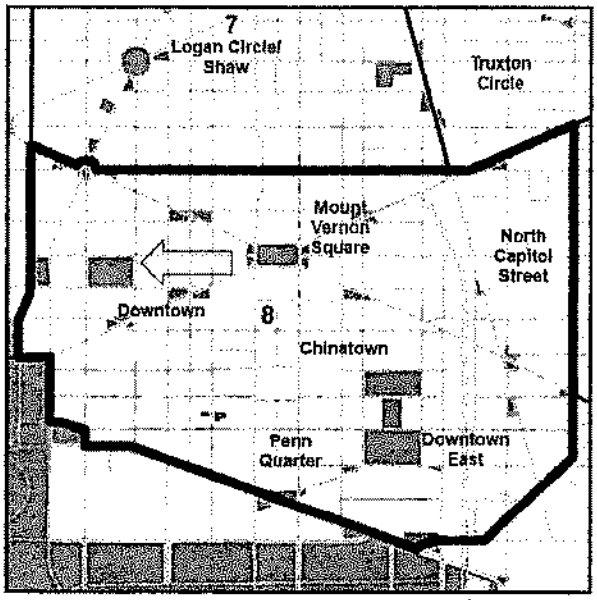
Overall, the region is stable, more so than most areas of the US, with growth expected to continue near- and long-term.

Neighborhood Analysis:

Location and Boundaries – The subject is located at the southeast corner of 13th and K Streets in the East End submarket just east of the Central Business District (CBD).



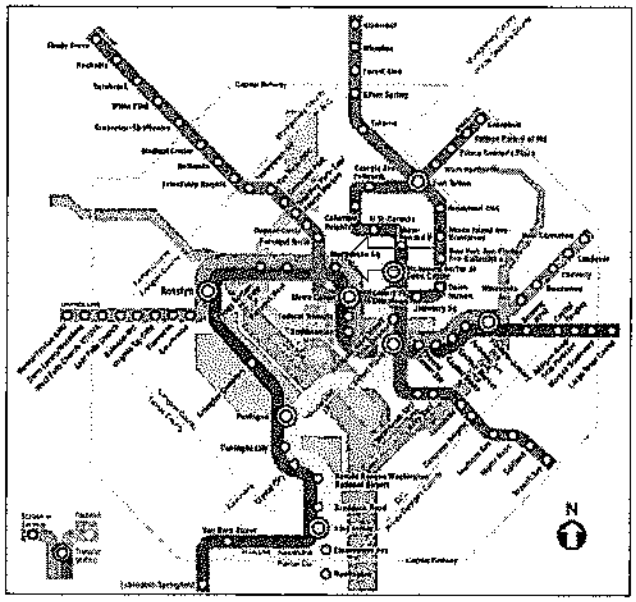
The neighborhood is tracked as Cluster 8 in Ward 2 of the District of Columbia. The Cluster is bounded by M Street and New York Avenue on the north; North Capitol Street on the east; Louisiana, Constitution, and Pennsylvania Avenues on the south; and 15th Street on the west.



Predominant Land Usage – Cluster 8 is primarily commercial, mid- to high-rise offices often with street-level retail. While commercial uses represent a majority (±86%) of all uses in the Cluster, low to moderate density residential (±6%) is common in the eastern portion of the neighborhood, with high density residential interspersed (±5%). In the immediate vicinity of the subject, uses are primarily mid- and high-rise office typical to the CBD and East End sections of the city. Ground floor retail is often present in these office structures.

Adequacy and Availability of Streets, Utilities, and Services – Supporting infrastructure is considered good. Public streets are generally in average condition. Fire and Police service is in close proximity to the subject, while public utilities of electricity, gas, water and sewer, and telephone are readily available.

Accessibility – The transportation network is excellent, although area traffic arteries are typically congested during commuting times. The subject is located ±½-mile from New York Avenue, which leads east into Maryland, providing access to the Capital Beltway (I-495), while Route 395 is ±¾-mile to the east. The McPherson Square Metrorail Station is ±1-block to the west of the subject, while Metro Center Metrorail Station is ±4 blocks to the south. Metrobus service is provided along all major streets in the immediate neighborhood.



Detrimental Influences – No significant issues noted specific to the area.

Social Factors – Demographics from *STDB* are presented for the subject area in 0.25-, 0.50- and 1.00-mile radii, as follows.

	0.25 miles	0.5 miles	1 mile
Population			
2000 Population	2,144	10,441	40,280
2010 Population	3,181	13,231	49,259
2013 Population	3,255	13,716	51,840
2018 Population	3,505	14,988	56,854
2000-2010 Annual Rate	4.02%	2.40%	2.03%
2010-2013 Annual Rate	0.71%	1.11%	1.58%
2013-2018 Annual Rate	1.49%	1.79%	1.86%
2013 Male Population	54.0%	53.9%	51.8%
2013 Female Population	46.0%	46.1%	48.2%
2013 Median Age	32.5	33.0	32.3
Households			
2000 Households	1,226	5,888	21,545
2010 Households	1,935	8,281	27,995
2013 Total Households	2,005	8,668	29,690
2018 Total Households	2,190	9,550	32,949
2000-2010 Annual Rate	4.65%	3.47%	2.65%
2010-2013 Annual Rate	1.09%	1.41%	1.83%
2013-2018 Annual Rate	1.74%	1.96%	2.11%
2013 Average Household Size	1.53	1.55	1.61
Median Household Income			
2013 Median Household Income	$58,999	$63,680	$71,046
2018 Median Household Income	$73,137	$77,844	$84,829
2013 2018 Annual Rate	4.39%	4.10%	3.61%
Average Household Income			
2013 Average Household Income	$95,561	$100,565	$107,321
2018 Average Household Income	$103,237	$108,614	$118,844
2013-2018 Annual Rate	1.56%	1.55%	2.06%
Per Capita Income			
2013 Per Capita Income	$60,361	$63,975	$62,085
2018 Per Capita Income	$65,878	$69,584	$69,293
2013-2018 Annual Rate	1.76%	1.70%	2.22%
Housing			
2000 Total Housing Units	1,416	6,470	23,799
2000 Owner Occupied Housing Units	201	919	4,968
2000 Owner Occupied Housing Units	1,027	4,970	16,577
2000 Vacant Housing Units	188	582	2,254
2010 Total Housing Units	2,376	9,203	31,246
2010 Owner Occupied Housing Units	427	1,868	8,406
2010 Renter Occupied Housing Units	1,508	6,413	19,589
2010 Vacant Housing Units	341	922	3,251
2013 Total Housing Units	2,335	9,477	32,696
2013 Owner Occupied Housing Units	436	1,900	8,760
2013 Renter Occupied Housing Units	1,569	6,768	20,930
2013 Vacant Housing Units	330	811	3,006
2018 Total Housing Units	2,492	10,224	35,509
2018 Owner Occupied Housing Units	484	2,128	9,927
2018 Renter Occupied Housing Units	1,707	7,421	23,022
2018 Vacant Housing Units	302	674	2,560

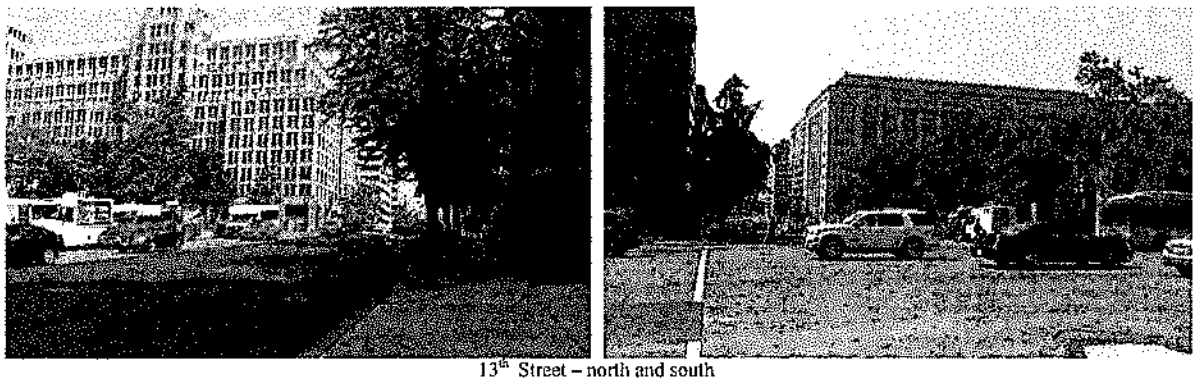
Population and Households - In the identified market area, the current year population is 51,840. In 2010, the Census count in the area was 49,259. The rate of change since 2010 was 1.58% annually. The 5-year projection for the population in the area is 56,854 representing a change of 1.86% annually from 2013 to 2018. The household count in this area has changed from 27,995 in 2010 to 29,690 in the current year, a change of 1.83% annually. The 5-year projection of households is 32,949, a change of 2.11% annually from the current year total. Average household size is currently 1.61, compared to 1.61 in the year 2010. The number of families in the current year is 6,483 in the specified area.

Housing - Currently, 26.8% of the 32,696 housing units in the area are owner occupied; 64.0%, renter occupied; and 9.2% are vacant. Currently, in the US, 56.4% of the housing units in the area are owner occupied; 32.3% are renter occupied; and 11.3% are vacant. In 2010, there were 31,246 housing units in the area - 26.9% owner occupied, 62.7% renter occupied, and 10.4% vacant. The annual rate of change in housing units since 2010 is 2.04%. Median home value in the area is $472,236, compared to a median home value of $177,257 for the U.S. In 5 years, median value is projected to change by 6.01% annually to $632,144.

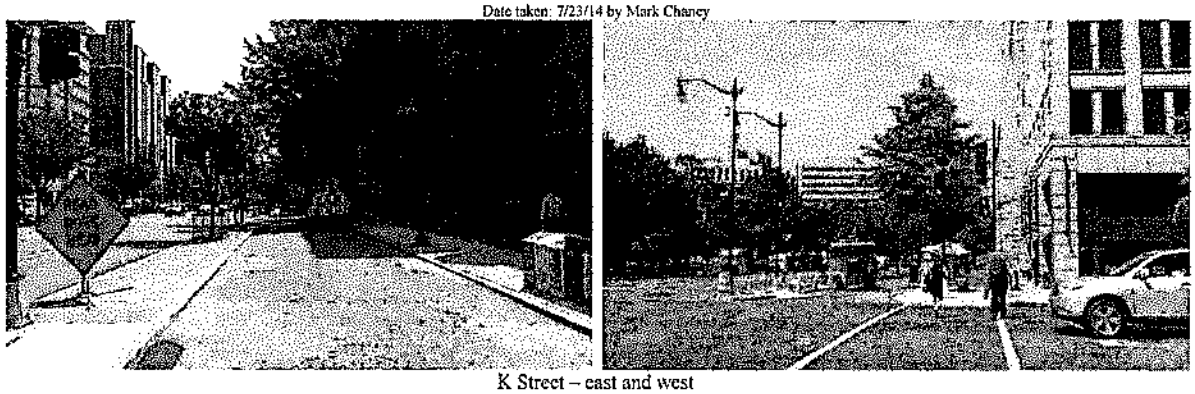
Income - Current median household income is $71,046 in the area, compared to $51,314 for all US households. Median household income is projected to be $84,829 in 5 years, compared to

$59,580 for all US households. Current average household income is $107,321 in this area, compared to $71,842 for all U.S households. Average household income is projected to be $118,844 in 5 years, compared to $83,667 for all US households. Current per capita income is $62,085 in the area, compared to the US per capita income of $27,567. The per capita income is projected to be $69,293 in 5 years, compared to $32,073 for all US households.

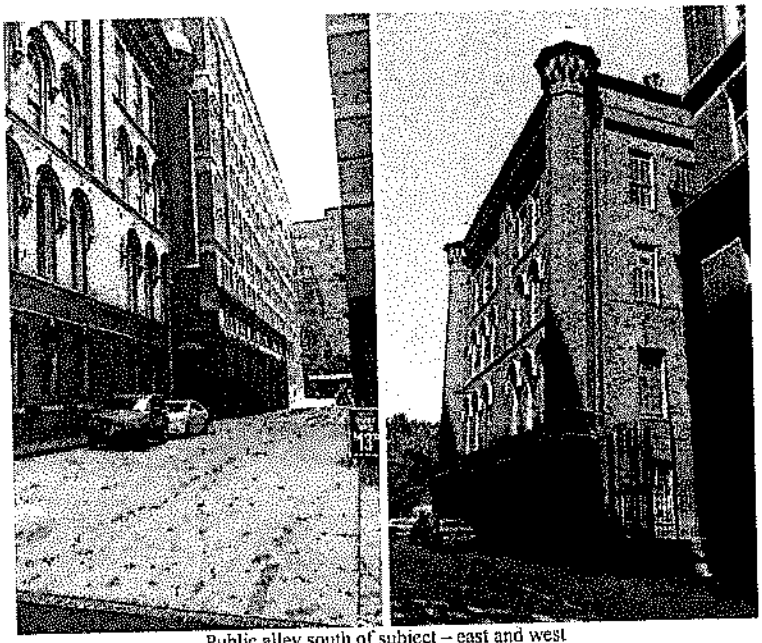
Conclusion - The subject is situated in the East End submarket of Washington, DC, just east of the CBD and within neighborhood cluster 8. The transportation network is good, with various main roadways for vehicular traffic with several bus and Metrorail stops in the area. The subject neighborhood is mainly improved with office development, but also with an increasing amount of high-rise residential, ground floor retail, and hotels. Demographic data indicates modestly increasing population and household levels. The neighborhood is in the stability stage of the neighborhood life cycle.



13th Street – north and south
Date taken: 7/23/14 by Mark Chaney



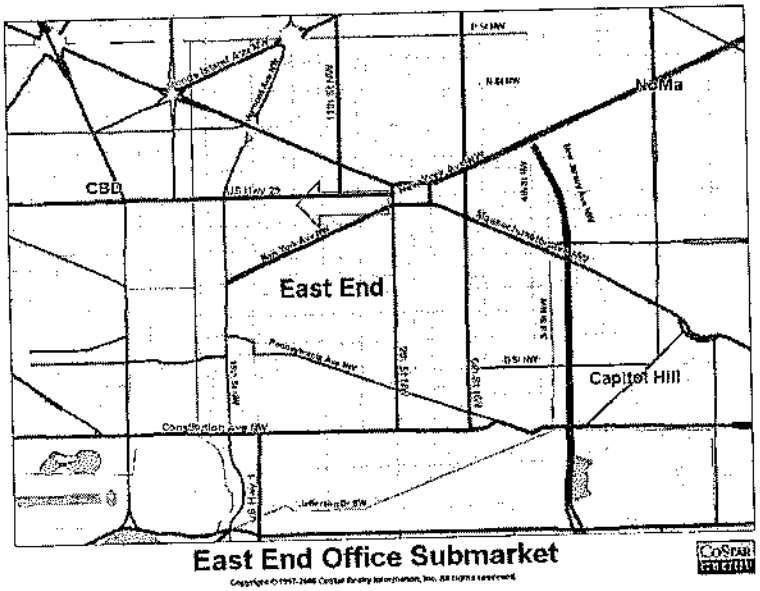
K Street – east and west
Date taken: 7/23/14 by Mark Chaney



Public alley south of subject – east and west
Date taken. 7/23/14 by Mark Chaney

Market Analysis:

The highest and best use of the subject is renovation/conversion of the subject as a *Class A* (given extensive renovations required a new build-out would equate to *Class A* space) mixed-use building with office and retail. As such, the focus of this market analysis will be on *Class A* office and retail product in the East End submarket. We have examined market conditions within the submarket, the larger District of Columbia, and the region.



East End Office Submarket

Inventory

The East End is a primary office node, with 37.7% of *Class A* office space in DC and 13.2% of office space in the region. A comparison of its size relative to the broader markets is presented on the following chart, as of 3Q'14.

Market Size Comparison - *Class A* Office Only			
	East End	DC	Region
# Buildings	121	336	1,400
SF Office Inventory	34,319,943	91,093,501	259,917,210
% Total DC	37.68%	100.00%	-
% Total Region	13.20%	35.05%	100.00%

Vacancy

Washington remained one of the tightest CBDs in the nation; however, vacancy in both the CBD and East End submarkets have pressed above 10%. The 3Q'14 DC direct space office vacancy for *Class A* product stands at 10.8%, slightly lower than regional vacancy. The East End *Class A* submarket was just below DC vacancy at 10.2%. The relative tightness of these submarkets is not surprising, as the traditional CBD, East End and the core portion of the Capitol Hill submarket were close to built-out, with most recent, current and proposed construction near the Navy Yard Metro and Nationals Stadium, or in NoMa. The current and proposed amount of construction in the East End appeared to be keeping pace with absorption.

Historical Office Space Vacancy – Class A						
	East End		DC		Region	
	Direct	Total	Direct	Total	Direct	Total
QTD	10.2%	11.0%	10.8%	11.6%	14.8%	16.0%
2014 2Q	10.2%	11.1%	11.1%	11.8%	15.0%	16.1%
2014 1Q	9.3%	10.2%	10.7%	11.5%	14.7%	15.8%
2013 4Q	9.1%	10.0%	10.8%	11.6%	14.1%	15.1%
2013 3Q	9.8%	10.7%	10.4%	11.2%	13.6%	14.6%
2013 2Q	10.3%	11.2%	10.5%	11.4%	13.4%	14.6%
2013 1Q	9.7%	10.6%	10.6%	11.5%	13.3%	14.5%
2012 4Q	10.0%	10.7%	10.1%	10.9%	13.1%	14.3%
2012 3Q	9.5%	10.2%	10.1%	10.9%	12.9%	14.0%
2012 2Q	8.8%	9.5%	10.9%	11.7%	13.3%	14.4%
2012 1Q	8.8%	9.5%	10.8%	11.8%	13.4%	14.6%

Office Space Delivery

Since the economic downturn, the pace of delivery of new product has slowed throughout the region; although some projects in good locations have broken ground within the past few years. The slowdown in delivery was particularly evident in DC as the CBD was essentially built-out and development opportunities (short of demolition and redevelopment) in the East End were becoming scarce, with many projects in the emerging NoMa submarket and in the Southeast portion of the Capitol Hill submarket still under construction. Since late 2011, 4 properties containing ±906,426 SF had been constructed in the submarket, while 2 additional properties are

under construction containing 590,348 RSF. Additionally, there were 11 proposed properties in the submarket.

Historical Office Space Delivery – Class A			
	East End	DC	Region
QTD	0	168,769	1,382,523
2014 2Q	287,800	287,800	1,479,473
2014 1Q	575,941	575,941	1,031,248
2013 4Q	0	774,511	1,881,894
2013 3Q	0	135,000	1,120,104
2013 2Q	0	450,000	916,834
2013 1Q	42,685	42,685	232,624
2012 4Q	0	98,243	1,180,348
2012 3Q	0	0	358,285
2012 2Q	0	426,619	779,851
2012 1Q	0	0	477,508
2011 4Q	169,271	169,271	877,035

Absorption

In the submarket, absorption has generally matched the pace of deliveries. While new government leases have boosted absorption rates, many investors are becoming uneasy with the threat of oversupply and planning for extended lease-up periods and slow rent growth.

Net Absorption Trends (Direct Space Only)			
	East End	DC	Region
QTD	5,585	202,610	453,206
2014 2Q	203,865	182,432	751,646
2014 1Q	200,442	374,979	(960,718)
2013 4Q	233,617	312,745	249,688
2013 3Q	174,304	219,122	517,418
2013 2Q	(189,414)	485,012	583,083
2013 1Q	136,308	(437,377)	(356,131)
2012 4Q	(166,326)	138,655	592,952
2012 3Q	(242,186)	709,771	1,166,704
2012 2Q	(9,890)	217,558	1,009,647
2012 1Q	71,563	1,026,724	828,655
2011 4Q	110,047	345,917	(203,009)

Rental Rates

Rental rates (*full service* and *triple net* (NNN) lease structures) are presented on the following table for the East End *Class A* space.

Asking Rental Rates – East End Class A Office	
Full Service (Leases – Number	170
Rental Rate Range	$25.00-$76.00
Weighted Average	$53.43
NNN Leases – Number	114
Rental Rate Range	$24.00-$60.00
Weighted Average	$43.62

Asking rents have been generally stable to moderately increasing over the past 3 years and are presented on the following table.

Historical Office Asking Rents ($/SF *Full Service*) - Direct Space Only			
	East End	DC	Region
QTD	$58.61	$55.27	$39.30
2014 2Q	$58.69	$55.44	$39.37
2014 1Q	$58.93	$56.03	$39.64
2013 4Q	$58.79	$55.63	$39.54
2013 3Q	$57.26	$54.92	$39.53
2013 2Q	$57.65	$55.13	$39.82
2013 1Q	$59.13	$55.36	$39.91
2012 4Q	$58.42	$54.90	$39.69
2012 3Q	$58.26	$54.99	$39.83
2012 2Q	$57.54	$54.43	$39.53
2012 1Q	$57.67	$54.25	$39.47
2011 4Q	$58.56	$53.75	$39.03

The *PwC Investor Survey* for 2Q'14 indicates market participants were anticipating modest increases (1.67% on average) in rent over the next year.

Sale Trends

A survey of comparable sale data (1/12 to present as indicated by *CoStar*) indicated a total of 19 transfers of *Class A* office properties within the East End submarket. Including all transfers, the average building area was 329,069 SF with a median of 258,692 SF. These transfers ranged in price from $410.32/SF to $881.73/SF, with an average price of $626.73/SF, while the median was $653.04/SF. Within this survey 12 overall capitalization rates (OARs) were reported from 3.50% to 6.75%, averaging 5.03%.

Retail Market

Retail conditions within the East End Submarket are somewhat strong. The submarket includes 251 existing retail properties containing 1,871,923 RSF. The retail vacancy is currently at 4.2% (direct), down from 5.4% a year ago. Retail absorption in the submarket was reported at 30,299 RSF in 2013 with an additional 12,304 RSF absorbed in 2014 to date. Face rents currently average $48.98/SF on a NNN basis.

Overall Market Assessment

The DC regional office market has a current vacancy rate of 14.8%, with the East End *Class A* market having a vacancy rate of 10.2%. Absorption has been ostensibly positive, keeping pace with deliveries. Since late 2011, East End inventory has only increased by ±2.7%, while an additional 1.7% of *Class A* inventory is currently under construction. Projections for the near-term included slow growth, declining vacancy rates and continuation of recent trends.

Site Description:

Location / Identification - The subject is located at the southeast corner of 13th and K Streets at 925 13th Street NW, Washington, DC 20005. It is known as Lot 808 in Square 285 for taxation purposes.

Size - 14,938 SF.

Shape - Rectangular.

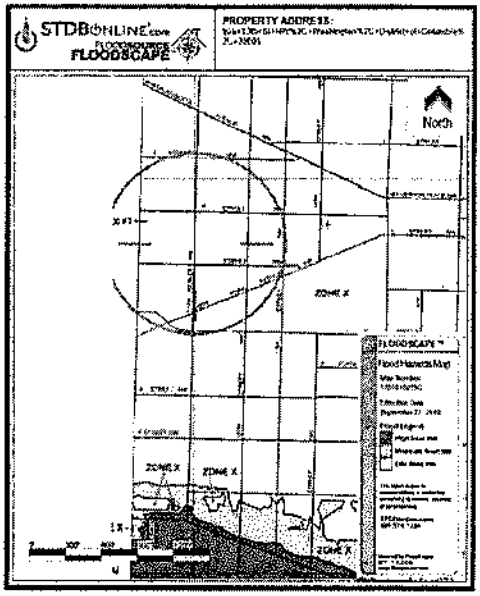
Access and Frontage - ±143' on 13th Street and ±105' on K Street, with pedestrian access from both, and an alley south of the property. The only vehicle access is from this alley that connects 13th and 12th Streets.

Visibility - Good.

Topography - Slopes downward slightly from north to south.

Drainage - Assumed adequate and facilitated by a public storm water system.

Flood Zone - According to FEMA Map #1100010019C, dated 9/27/10, the site is within Zone X, an area outside a 100-year flood hazard.



Utilities - Public water, sewer, electricity, gas and telephone.

Easements/Encroachments - None adverse known.

Soil Condition - Assumed adequate, no data supplied.

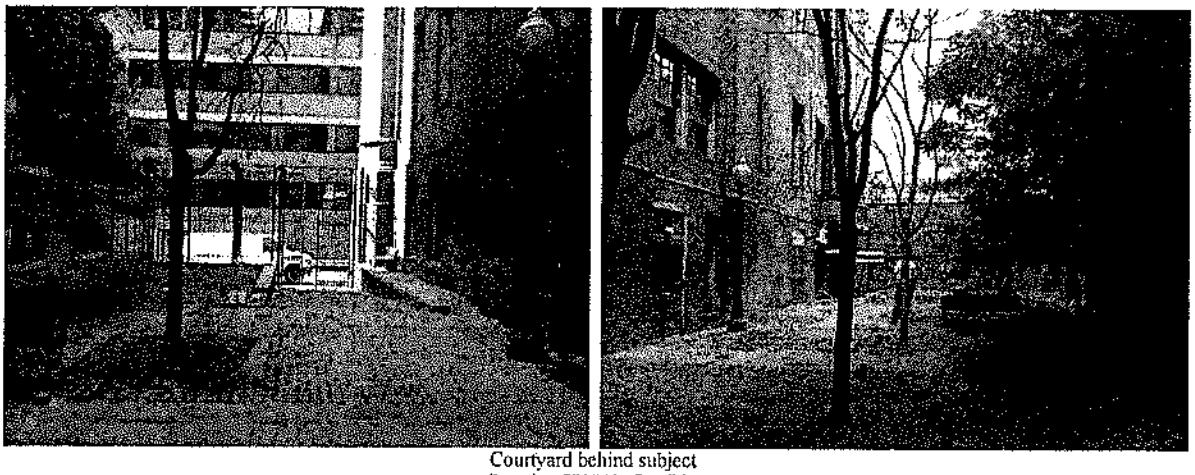
Environmental Hazards - While no data was provided detailing specific issues, we were provided with a summary of renovation costs which includes abatement. According to the developers representative, this is for lead paint.

Detrimental Influences - None significant noted.

Site Improvements - A 45,690 SF, 6-story, brick school building from 1869. There is a fenced rear open area on-site.

Surrounding Land Uses - Office to the north, south, and east; to the west is Franklin Park.

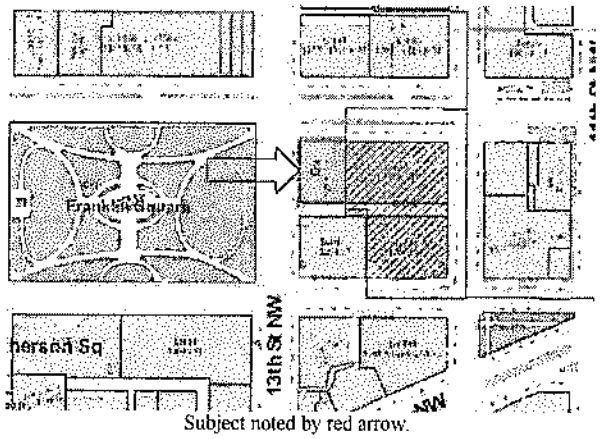
Conclusion - The site is considered to be physically capable of supporting reasonably expected legally permissible uses.



Courtyard behind subject
Date taken: 7/23/14 by Greg Zehe

Zoning Analysis:

The subject land is zoned C-4, *Central Business District*.



Subject noted by red arrow.

This Central Business District zoning was designed for the Downtown core that comprises the retail and office centers for both DC and the metropolitan area, to be large enough to provide an adequate area for a variety of commercial, retail, and business uses to serve the metropolitan area, but nevertheless compact enough to retain its identity, and lastly, to contain high-density residential and mixed-use developments. Allowable uses include office, high-density residential and a number of retail uses. The bulk requirements are as follows:

- Maximum FAR of 8.5 to 10.0 (depending on width of adjoining streets)
- Maximum height of 110' and 130' on 110' adjoining streets
- Maximum lot occupancy of 100%.
- Parking requirement for general office use, 1 space per 1,800 SF of GBA

Based on 45,690 SF of GBA above-grade, the developed floor area ratio (FAR) is 3.06. The subject as improved appears to comply with current bulk requirements of the C-4 district.

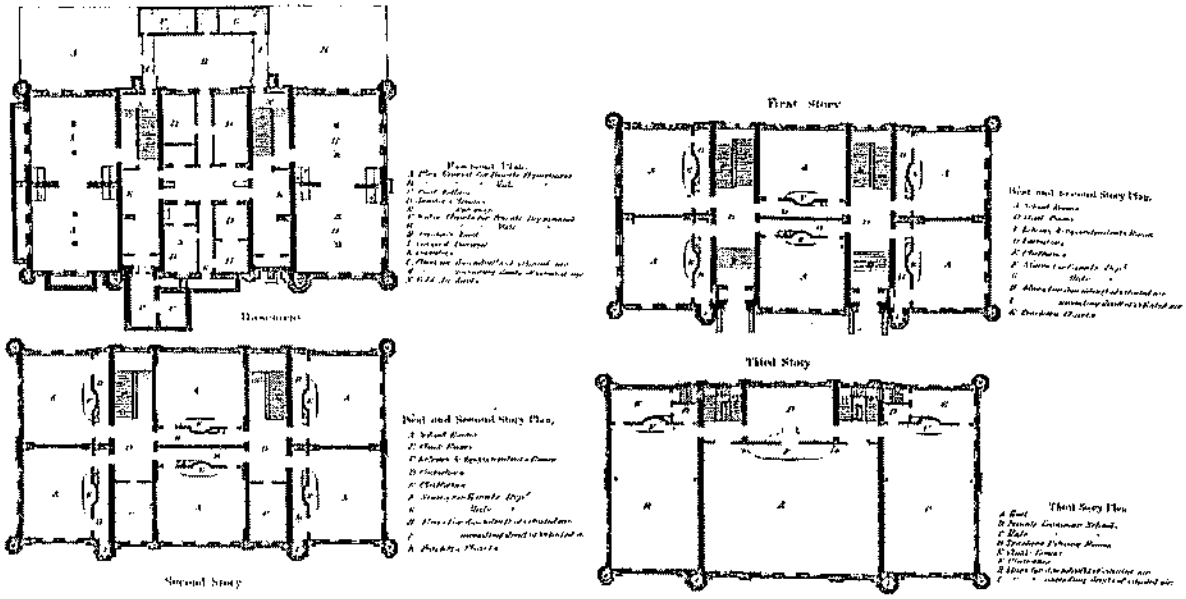
Historic Designation, Possible Use Restriction Agreement & Wage Premium Requirements

We spoke with representatives of the District of Columbia and the developer's representative for the proposed project concerning the subject's historic designation and use restriction pertaining to the existing, historic school building. It is our understanding that the existing school building could not be demolished, expanded, nor its façade be altered, nor can the original interior walls be removed, and any changes to the building require review by the Historic Preservation Commission. However, this does not limit the use of the building, which instead may be limited through a development program approved by the DC government that would require that the building be used for ground floor retail (restaurant) with the balance of the space being used as galleries for showcasing contemporary art and an associated café and bookstore. In addition, any redevelopment of the property will be subject to the First Source Agreement and the Certified Business Enterprise programs.

Improvements Description:

The subject is *The Franklin School,* a ±45,690 SF 6-story historic masonry school building constructed circa 1869. The property is historically designated by the National Park Service and the District of Columbia. Due to the school's historic designation, the exterior of the existing building cannot be substantially altered, nor can a majority of the interior. The following is cited from the www.franklinschool.org website.

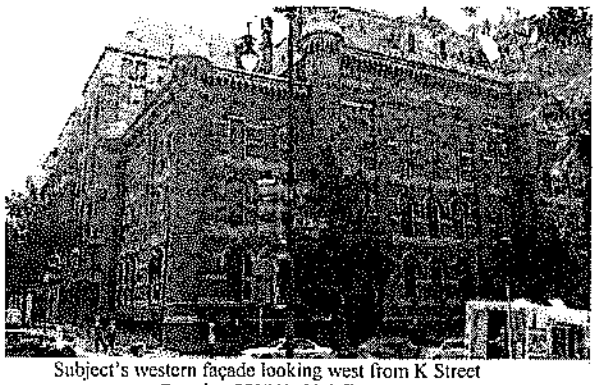
> ... Franklin opened in 1869, and its fourteen classrooms became a laboratory and model for the the city's new public school system. ... The massive Great Hall at Franklin (originally designed to seat up to 1,000 people) – with its once handsome murals mirroring the building's exterior decoration – functioned as a community resource for concerts, exhibitions, and public meetings. Alexander Graham Bell successfully tested his new invention, the "photophone" (sound transmitted by light waves), from the rooftop of Franklin School in 1880. The building's 19th-century façade – including a bust of Benjamin Franklin – is an eloquent expression of the principles and importance of public education in a democracy in post-Civil War America. The exterior of Franklin was restored in 1992 and is on the National Register of Historic Places and has been designated as a National Historic Landmark. The interior, one of only thirteen DC buildings given interior landmark protection, remains largely the way it was when the building was closed decades ago...



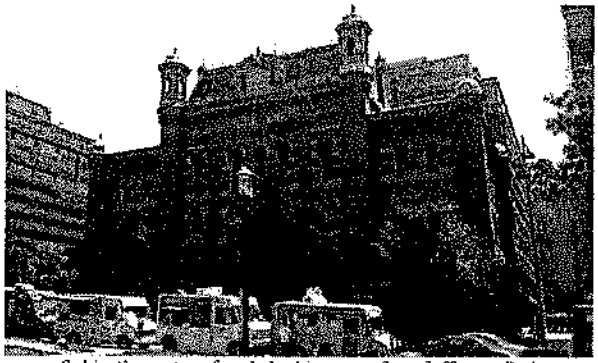
The property is proposed for redevelopment with ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances).

Effective Age -	45+ years (estimated economic).
Condition -	The exterior of the building renovated was in 1992 and is generally in good condition while the interior is in poor condition. At inspection we noted peeling paint and cracked plaster, and no functional mechanical systems. Considering the age of the improvements and load bearing masonry construction, it is prudent for a complete structural survey to be undertaken.
Remaining Economic Life -	≤5 years.
Foundation -	Masonry.
Frame -	Masonry.
Floor Base -	Wood joists.
Floor Cover -	A mixture of worn commercial carpeting, hardwoods, and tile.
Ceiling -	Primarily painted plaster on lath, or equivalent. Heights vary greatly, with some classrooms featuring ±15' heights, while most areas on the 4th floor have ±22' ceiling heights.
Exterior Walls -	Brick, stone and limestone.

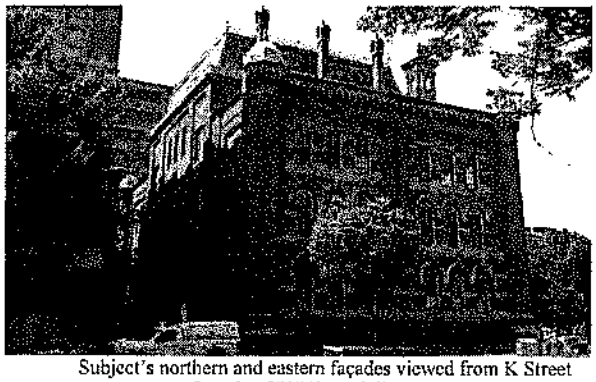
Windows -	Double-hung wooden sash with arched upper sash measuring from 9′ to 14′ in height.
Interior Partitions -	Predominately plaster/gypsum over brick or wood framing.
Roof Cover/Support -	Wood framing finished with slate and membrane. We were unable to inspect the roof, but did see signs of leaking on the upper levels.
Plumbing -	Assumed inadequate for modern requirements.
HVAC -	Not functional.
Fire Protection -	None.
Electrical -	Assumed inadequate for modern requirements.
Elevators -	None; however, one will be added in proposed renovation.
Stairs -	Two main wells that are historically designated.
Insulation -	Unknown and assumed inadequate.
Landscaping -	Minimal.
Paving -	Brick.
Fencing -	Masonry and wrought iron surrounds the rear courtyard.
FAR -	3.06.
Parking -	None.
Functional Adequacy -	The subject was designed as a school, but is not functional *as is*.



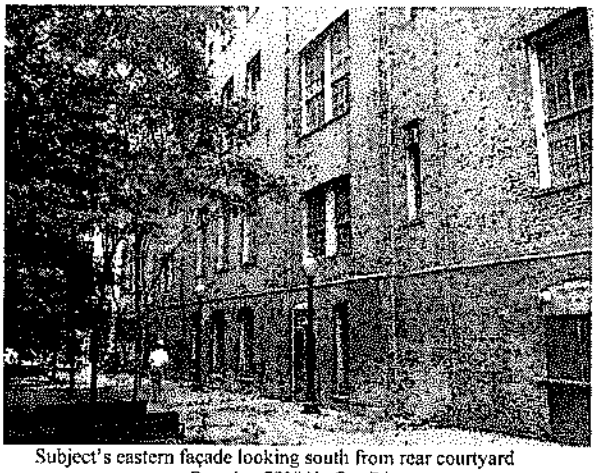
Subject's western façade looking west from K Street
Date taken: 7/23/14 by Mark Chaney



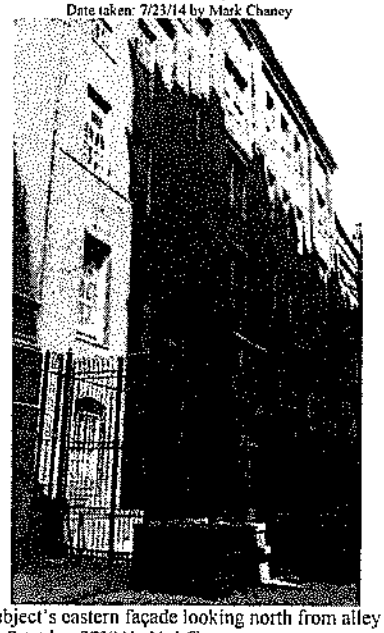
Subject's western façade looking west from Jefferson Park
Date taken: 7/23/14 by Mark Chaney



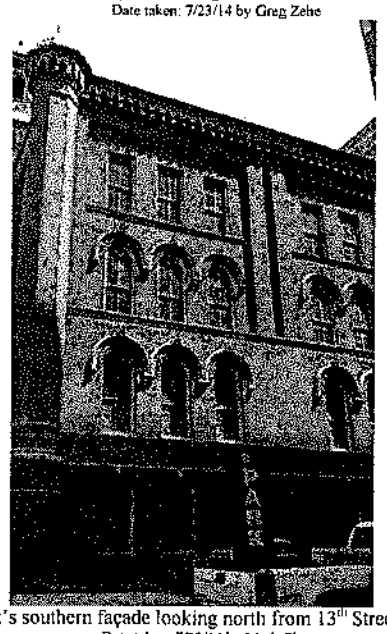
Subject's northern and eastern façades viewed from K Street
Date taken: 7/23/14 by Mark Chaney



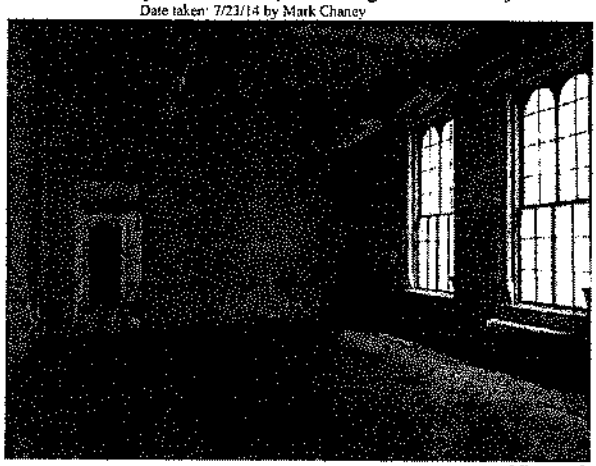
Subject's eastern façade looking south from rear courtyard
Date taken: 7/23/14 by Greg Zehe

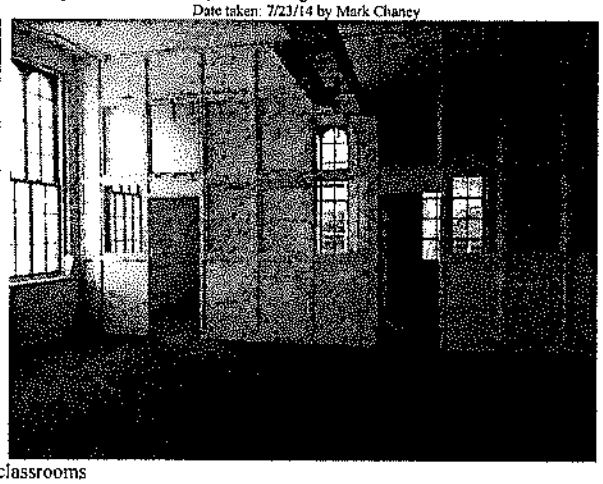


Subject's eastern façade looking north from alley
Date taken: 7/23/14 by Mark Chaney



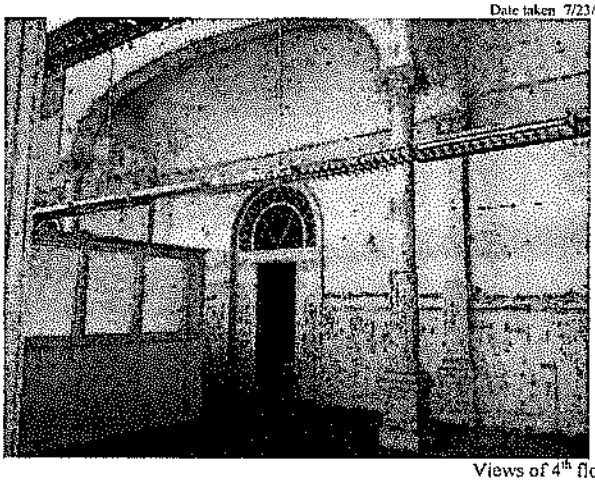
Subject's southern façade looking north from 13th Street
Date taken: 7/23/14 by Mark Chaney





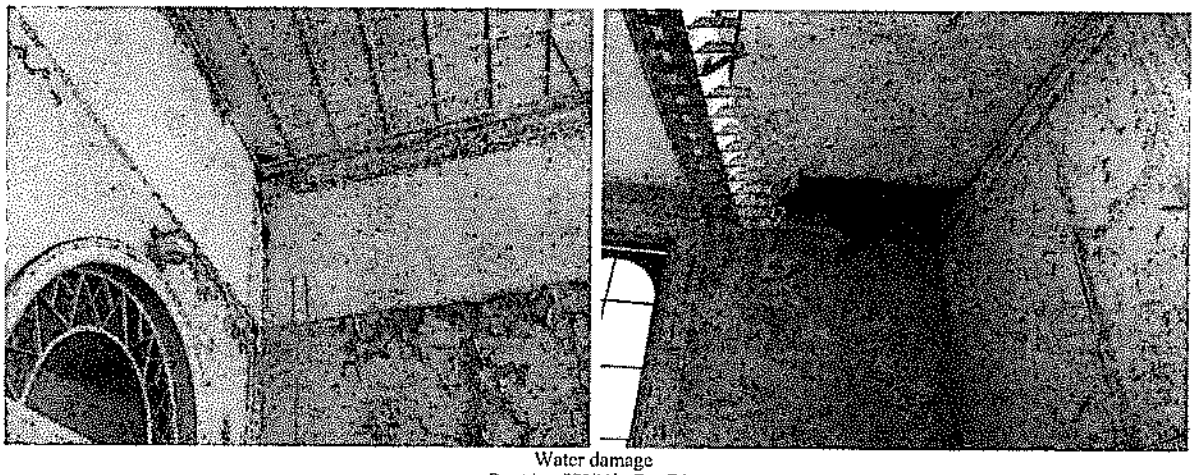
Views of classrooms
Date taken: 7/23/14 by Greg Zehe


Views of stairwell
Date taken: 7/23/14 by Greg Zehe



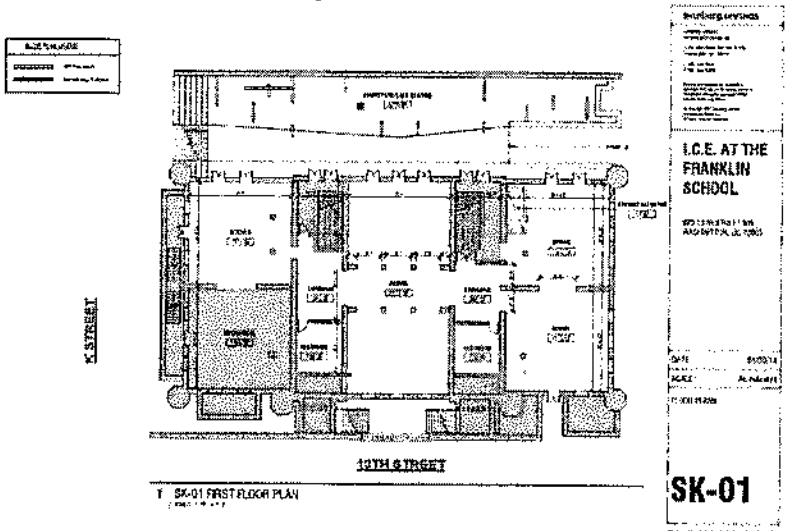

Views of 4th floor atrium area
Date taken: 7/23/14 by Greg Zehe

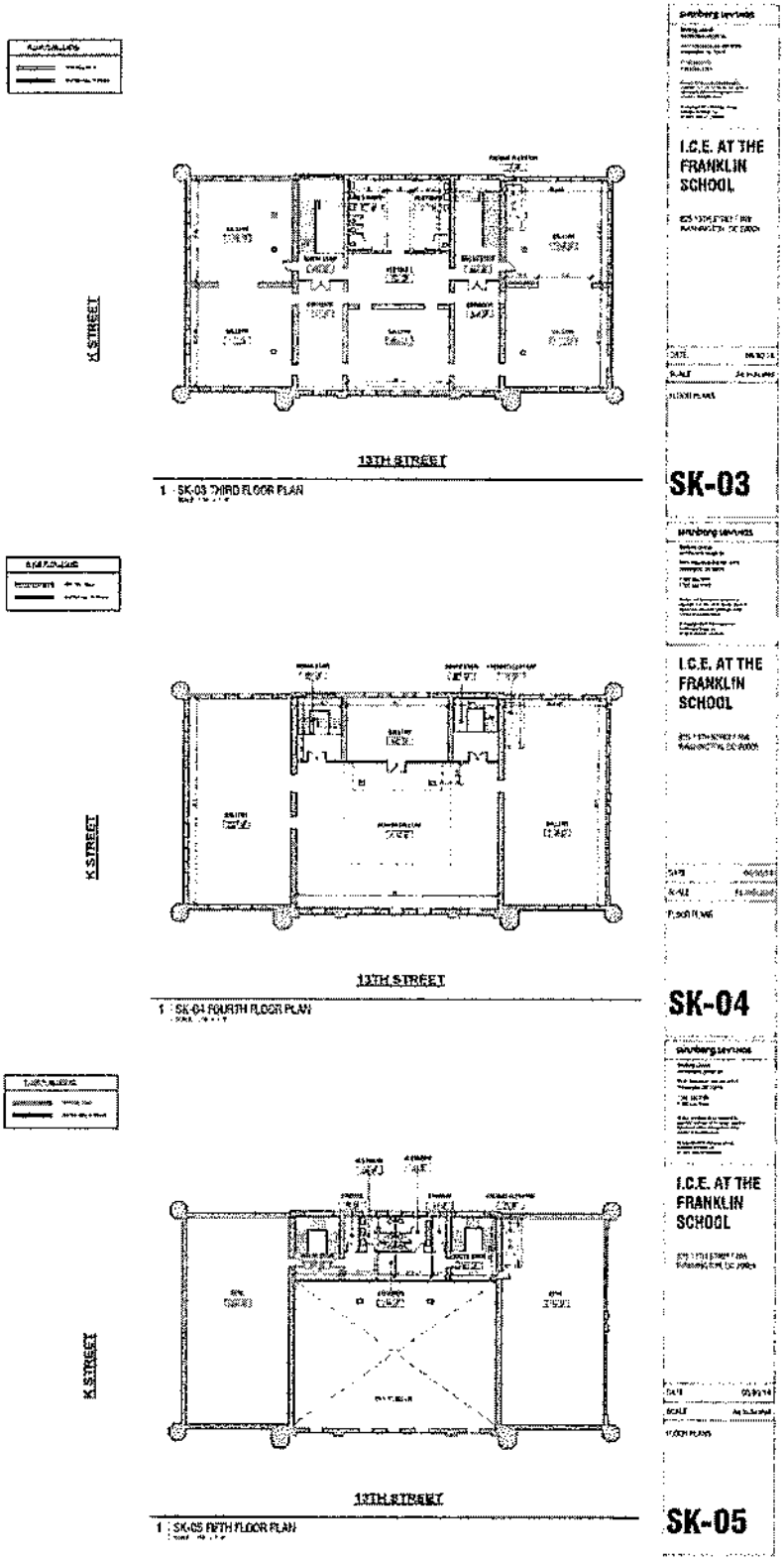

Water damage
Date taken: 7/23/14 by Greg Zehe

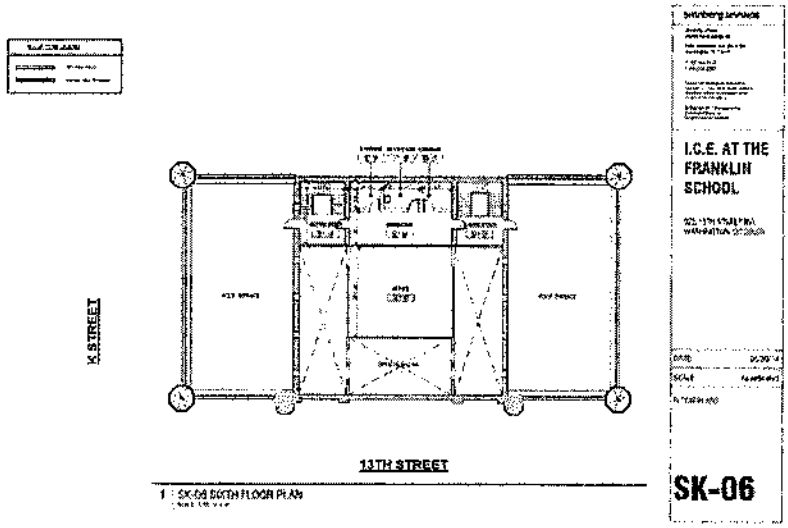


Water damage
Date taken: 7/23/14 by Greg Zehe

Proposed Floor Plans




K STREET
13TH STREET
1 SK-03 THIRD FLOOR PLAN
I.C.E. AT THE FRANKLIN SCHOOL
SK-03
K STREET
13TH STREET
1 SK-04 FOURTH FLOOR PLAN
I.C.E. AT THE FRANKLIN SCHOOL
SK-04
K STREET
13TH STREET
1 SK-05 FIFTH FLOOR PLAN
I.C.E. AT THE FRANKLIN SCHOOL
SK-05



Tax and Assessment Data:

The subject is identified as Lot 808 in Square 285. Properties in the District of Columbia are assessed every year on a fiscal basis at 100% of market value. The fiscal year begins October 1st and ends September 30th. Taxes are payable in two increments, due March 31st and September 15th. The following table specifies the most recent tax assessment for the subject:

	Current Value (2014)
Land:	$6,273,960
Improvements:	$6,810,680
Total Value:	$13,084,640

If owned by a for-profit entity the assessed burden would be based on a rate for Class 2 commercial properties. This class of property with assessed value of over $3 million now has a multi-level split tax structure; for the first 3 million of the assessed value the tax rate is $1.65 per $100, over $3 million the tax rate is $1.85 per $100. Based on the current assessment the calculated tax burden would be $236,066.

Based on our concluded *market value as is* via the sales comparison approach, the current assessment is deemed high.

Highest and Best Use:

"The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property - specific with respect to the user and timing of the use - that is adequately supported and results in the highest present value."[6]

[6] Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute), 2010.

The highest and best use of a property is concluded after each potential use has been tested using the four criteria. The use that fulfills the four criteria and maximizes value is the highest and best use. A distinction is made between the highest and best use of the land or site as though vacant and the highest and best use of the property as improved. Highest and best use of the land or site as though vacant may be the existing use, a projected development, a subdivision, an assemblage, or speculative holding. The highest and best use of a property as improved may be continued maintenance, renovation, rehabilitation, expansion, adaptation or conversion to another use, partial or total demolition, or some combination of these alternatives.

As If Vacant

Physically Possible – Reasonably expected legally permissible uses.

Legally Permissible – Zoned C-4, permitted uses include commercial, residential and mixed uses with a maximum FAR of 10.0. Because the subject is owned by the DC government, any redevelopment of the property would be subject to the FSA and the CBE programs.

Financially Feasible – An analysis of local submarket and neighborhood conditions are generally supportive of new construction, including office, residential, and mixed-uses. Other forms of specialized development are feasible, but must compete with office/residential/retail development. A survey of area transfers point to the feasibility of new office construction as well as residential (multifamily) development; each typically including some distribution of the lower levels to retail use. Note that because the subject is owned by the DC government, any development/redevelopment of the property would be subject to the FSA and the CBE programs. As explained in our forthcoming valuation, these programs come with added development costs. In the subject scenario they do not negate financial feasibility, but they do exert a direct downward pressure on *market value*.

Maximally Productive – The local office market remains one of the healthiest, if not the healthiest in the nation. Prices paid for land or redevelopment sites in and around the CBD have remained high, generally higher than that paid for residential multifamily development/redevelopment sites. Moreover, the depth of the residential market is uncertain; the quantity of new apartment construction has some developers contemplating for-sale condominium development. While each use remains feasible for the subject, the highest return would be through office development.

As Improved

Physically Possible – Reasonably expected legally permissible uses.

Legally Permissible – Presently the subject is improved with a ±45,690 SF school building that is a designated historic landmark. The improvements pre-date the current zoning code, but appear to be in conformance.

Financially Feasible – Given the existing historically designated building (our *hypothetical* value is based on the addition of a use restriction limiting use to a restaurant and art gallery); the costs associated with renovation of the property are elevated. This condition is compounded by wage premiums associated with the First Source and CBE programs. While these factors each exert downward pressure on the *market value as is*, renovation and conversion of the structure for office or apartment use is feasible.

Maximally Productive – Renovation/conversion of the existing subject improvements for office use without the First Source and CBE programs. We estimate the *market value as is* without these programs would be $9,730,000 (rounded).

Valuation Process:

There are three valuation approaches common to appraisal, "In the sales comparison approach, properties similar to the subject property that have been sold recently or for which listing prices or offers are known are compared to the subject. Data from generally comparable properties is used, and comparisons are made to demonstrate a probable price at which the subject property would sell if offered on the market.

In the cost approach, an estimated reproduction or replacement cost of the building and site improvements as of the date of appraisal is developed (including an estimate of entrepreneurial profit or incentive), and an estimate of the losses in value (depreciation) that have taken place due to wear and tear, design and plan deficiencies, or external influences is subtracted. An estimate of the value of the land is then added to this depreciated building cost estimate. The total represents the value indicated by the cost approach.

In the income capitalization approach, the potential income of the property is calculated and deductions are made for vacancy and collection loss and expenses. The prospective net operating income of the property is then estimated. To support this estimate, operating statements for the subject property in previous years and for comparable properties are reviewed. An applicable capitalization method and appropriate capitalization rates are developed and used in calculations that lead to an indication of value."[7]

The valuation of the subject was accomplished using the sales comparison approach for the *market value as is* and a residual analysis (employing elements of both the income capitalization and cost approaches) for the *hypothetical* value. Due to the age and historic status of the subject improvements, the cost approach was not deemed directly applicable; however, elements of this

[7] Appraisal Institute, *The Appraisal of Real Estate*, 14th ed. (Chicago: Appraisal Institute, 2013), 669.

approach were considered in our adjustment process. As the subject is a vacant school needing to be stripped to shell condition and renovated prior to future use, direct application of the income capitalization approach was not applicable given the lack of specific development plans at this juncture.

Sales Comparison Approach:

In order to value the existing improvements we conducted a survey of transfers in and around the subject area of older structures adapted to alternative uses. The sales that have been included are considered the best available information concerning comparables to the subject.

Comparable Sale #1

Location:	608 Massachusetts Avenue NE, Washington, DC	
Sale Data	**Grantor:**	American Society of Interior Designers
	Grantee:	University of Georgia Foundation
	Identification:	Square 865, Lot 60
	Sale Date:	October 2013
	Consideration:	$5,550,000
	Rights Conveyed:	Leased fee (leased back by seller for 9 months)
	Financing:	Cash equivalency
	Site Area:	6,861 SF
	Zoning:	R-4
	GBA:	20,362 SF (including ±3,702 SF below-grade)
	Price/SF GBA:	$272.57
Verification:	Public records / *CoStar* / Bill Prutting of *CBRE*	
Comments:	This is a 3-story (plus basement) office building purchased to convert to student housing for the University of Georgia DC Studies program. The property was built in 1910 and reported to be in average condition.	

Comparable Sale #2

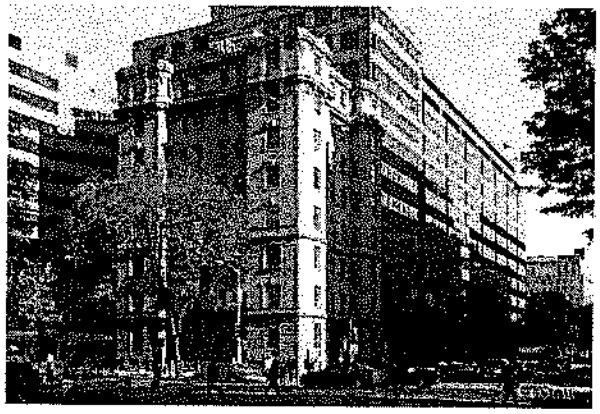
Location: 1025 15th Street NW, Washington, DC

Sale Data

Grantor:	DC Healthcare Systems Inc.
Grantee:	Honeybee Hospitality LLC
Identification:	Square 216, Lot 26
Sale Date:	October 2013
Consideration:	$9,500,000
Rights Conveyed:	Fee simple estate
Financing:	Cash equivalency
Site Area:	2,927 SF
Zoning:	C-4
GBA:	±34,000 SF (including ±2,682 SF below-grade)
Price/SF GBA:	$279.41

Verification: Public records / *CoStar* / *MRIS* / Guy d'Amecourt, *Summit Commercial Real Estate*

Comments: A 9-story (plus basement) *Class B* office building constructed in 1903 which was purchased vacant to convert a hotel. The property was reported to be in average condition.



Comparable Sale #3

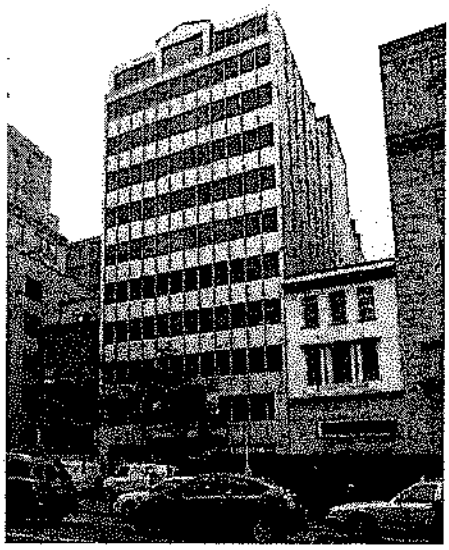
Location: 1522 K Street NW, Washington, DC

Sale Data

Grantor:	1522 K Street LLC
Grantee:	ESP1522K LLC
Identification:	Square 199, Lot 63
Sale Date:	June 2013
Consideration:	$23,500,000
Rights Conveyed:	Fee simple estate
Financing:	Cash equivalency
Site Area:	8,677 SF
Zoning:	C-4
GBA:	114,655 (including ±26,085 SF below-grade)
Price/SF GBA:	$204.96

Verification: Public records / *CoStar*

Comments: This is an 11-story (plus lower levels) *Class C* office building constructed in 1964, and purchased to convert to hotel use.



Comparable Sale #4

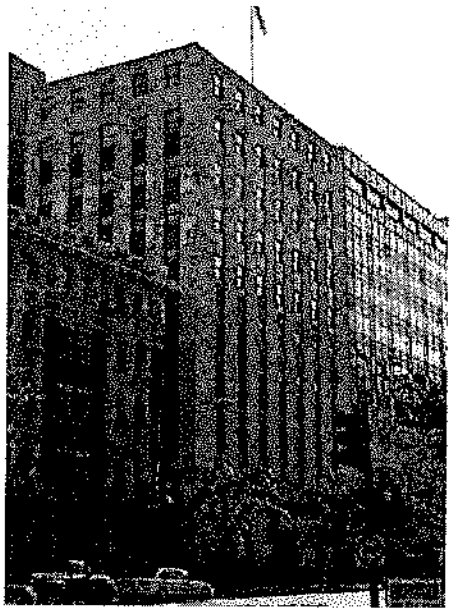
Location: 1729 H Street NW, Washington, DC

Sale Data

Grantor:	Kiplinger Washington Editors Inc
Grantee:	Palmetto Hospitality of Washington DC II LLC
Identification:	Square 127, Lot 854
Sale Date:	January 2012
Consideration:	$16,550,000
Rights Conveyed:	Fee simple estate
Financing:	Cash equivalency
Site Area:	6,669 SF
Zoning:	C-4
GBA:	72,000 (including ±10,548 SF below-grade)
Price/SF GBA:	$229.86

Verification: Public records / *CoStar* / Daniel McIntyre, *HFF*

Comments: A 10-story (plus basement) *Class B* office building constructed in 1950 which was purchased vacant to convert to a *Hampton Inn* hotel. The property was reported to be in average condition.



Comparable Sale #5

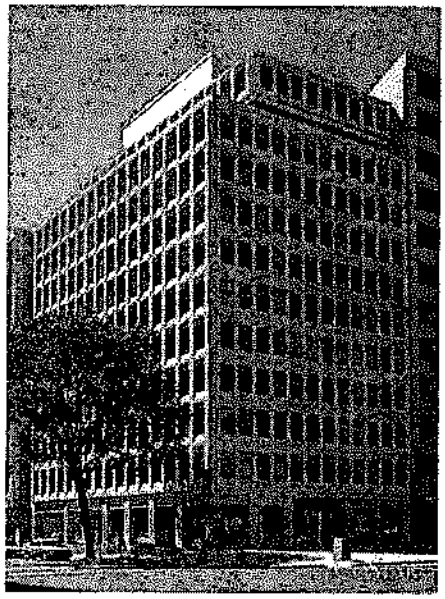
Location: 1100 Vermont Avenue NW, Washington, DC

Sale Data

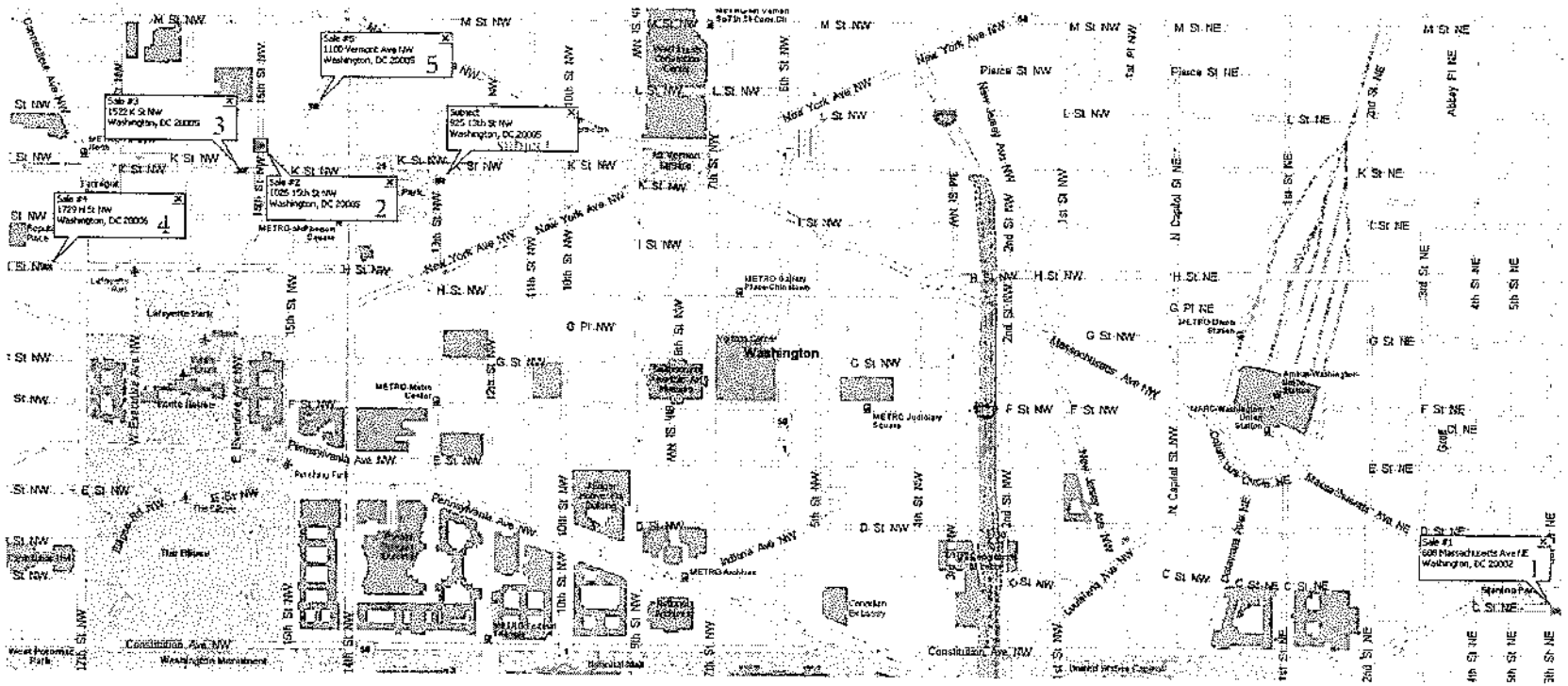
Grantor:	1100 Vermont Owner LLC
Grantee:	Nattak 1100 Vermont LLC
Identification:	Square 214, Lot 850
Sale Date:	April 2011
Consideration:	$14,200,000
Rights Conveyed:	Fee simple estate
Financing:	Cash equivalency
Site Area:	6,978 SF
Zoning:	C-4
GBA:	96,470 SF (including ±13,900 SF below-grade)
Price/SF GBA:	$147.20

Verification: Public records / *CoStar*

Comments: This is a 12-story (plus lower levels) *Class B* office building constructed in 1961, and purchased to renovate and reposition as a *Class A* office building.



The map below indicates the locations of the comparable sales in relation to the subject.



CHANEY & ASSOCIATES
Commercial Real Estate and Business Valuation

The following table summarizes the sales data previously delineated.

Comparable Sale:	#1	#2	#3	#4	#5
Location:	608 Massachusetts Ave, NE	1025 15th St, NW	1522 K St, NW	1729 H St NW	1100 Vermont Ave, NW
Sale Date:	Oct-13	Oct-13	Jul-13	Jan-12	Apr-11
Consideration:	$5,550,000	$9,500,000	$23,500,000	$16,550,000	$14,200,000
Rights Conveyed:	Leased Fee	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Zoning:	R-4	C-4	C-4	C-4	C-4
Historic:	No	No	No	No	No
Site area:	6,861	2,927	8,677	6,669	6,978
GBA:	20,362	34,000	114,655	72,000	96,470
Below Grade %:	18%	8%	23%	15%	14%
Price Per SF GBA:	$272.57	$279.41	$204.96	$229.86	$147.20

Adjustments to the comparables are summarized following for the subject *market value as is* (encumbered by FSA and CBE).

Comparable Sale:	#1	#2	#3	#4	#5
Price/SF	$272.57	$279.41	$204.96	$229.86	$147.20
Property Rights Conveyed	0%	0%	0%	0%	0%
Adjusted Price	$272.57	$279.41	$204.96	$229.86	$147.20
Financing Terms	0%	0%	0%	0%	0%
Adjusted Price	$272.57	$279.41	$204.96	$229.86	$147.20
Conditions of Sale	0%	0%	0%	0%	0%
Adjusted Price	$272.57	$279.41	$204.96	$229.86	$147.20
Expenditures After Purchase	0%	0%	0%	0%	0%
Adjusted Price	$272.57	$279.41	$204.96	$229.86	$147.20
Market Conditions	0%	0%	0%	5%	10%
Adjusted Price	$272.57	$279.41	$204.96	$241.35	$161.92
Location	10%	0%	0%	-5%	5%
Physical Characteristics	-25%	-20%	5%	-5%	5%
Economic Characteristics	-20%	-20%	-20%	-20%	-20%
sub-total adjustments	-35%	-40%	-15%	-30%	-10%
Final Adjusted Price	$177.17	$167.65	$174.22	$168.95	$145.72
Mean:	$166.74				
Median:	$168.95				

No adjustments were required for property rights conveyed, financing terms, conditions of sale, or expenditures after purchase.

- *Market Conditions* - #4 and #5 are adjusted upward given improvment since early 2011 to early 2012.
- *Location* - The adjustments are based on differences in area rents/sales prices, proximity to Metrorail, visibility, and block/corner location. All comparables (except #2) received varying adjustment for these factors, some of which were offsetting.
- *Physical Characteristics* – The adjustments are based on differences in size, quality, condition, age, utility (below-grade space) and historic designation. All of the sales required adjustments in varying degrees.
- *Economic Characteristics* – Downward adjustments are made to all comparables because the subject is owned by the District of Columbia and development must comply with both FSA and CBE requirements. These programs are not typical of the private market, but are a legal requirement for properties disposed by the District. In order to determine the impact of these programs on the subject value we surveyed area developers as to what, if any labor cost premiums are associated with the two programs.

We discussed cost premiums with Jim Davis of *Davis Construction*, George Kreis of *Turner Construction*, and also utilized survey data from actual construction cost budgets that required both FSA and CBE programs. Based on this survey, CBE cost premiums range from 0% to 3% over base construction costs, while those associated with FSA run between 5% and nearly 9%. While these figures paint a range, premiums are project specific, as are construction costs. Specific premiums at the subject have yet to be determined and would vary depending on the development plan.

Based on our discussions with area builders, and based on our experience with FSA and CBE premiums on other projects we have appraised, we have projected a combined cost premium of 10% (8% for FSA and 2% for CBE) over typical *market-oriented* development costs. In order to determine the impact on present value, we must first determine typical *market-oriented* development costs for new office construction.

First we have considered cost comparables, which presents a range of costs between $363/SF and $366/SF for *Class A* office buildings in the East End submarket buildings. Based on the cost comparables an appropriate unit rate is $365/SF GBA. A summary of these costs follow.

Cost Comparables		
Location	East End	East End
Gross Building Area (GBA)	244,201	432,323
Rentable Building Area	177,748	310,825
Garage GBA	59,439	86,646
Above Grade GBA	168,042	276,768
Hard Costs	$49,996,704	$63,998,626
Soft Costs (excludes leasing commissions)	$10,959,106	$37,389,713
Total Costs	$60,955,810	$101,388,339
$/SF Above Grade GBA	$363	$366
Construction Date	2006-2007	2006-2007

The previously discussed premiums associated with FSA and CBE are calculated below:

FSA & CBE Premiums	
Reconciled Construction Cost/SF	$365.00
FSA Premium (8%)	$29.20
CBE Premium (2%)	$7.30
Total Cost/SF:	*$401.50*

The overall impact of the elevated costs ($36.50/SF). Because the value of the finished product does not change, the impact of the cost premiums is deducted from the land value, along with any associated increase in soft costs and incentive. As such, below summarizes the base construction costs ($365/SF) plus an allowance for lease-up and marking costs (7.5%), and entrepreneurial incentive (20%).

Cost Summary per SF	
Land Value Unencumbered by FSA/CBE	$230.00
Market Construction Costs	$365.00
Lease-Up/Marketing Cost Estimate (7.5%)	$27.38
Incentive (20%)	$73.00
Total:	*$695.38*

In our analysis, the value of the land unencumbered by FSA and CBE, paired with market rate construction costs, lease-up and marking costs and incentive total $695.38/SF. Because the value of the finished product is the same regardless of whether FSA or CBE is required, the elevated construction costs ($401.50/SF),

lease-up and marking costs (which do not change from $27.38/SF) along with any impact on incentive ($80.30/SF vs. $73.00/SF) must be deducted from the total ($695.38).

	Per SF
Total	$695.38
Construction Costs with FSA & CBE	$401.50
Lease-Up/Marketing Costs	$27.38
Incentive (20%)	$80.30
Land Value with Encumbrances:	*$186.20*

The inclusion of FSA and CBE has a combined impact on land value of ±19% (or -$43.80/SF), which we rounded to a 20% economic characteristic adjustment within the sales comparison approach.

Based upon this analysis, we estimate the *market value as is* of the subject improvements (encumbered by FSA and CBE) to be $168/SF FAR, with its overall value calculated as (45,690 SF × $168/SF) $7,675,920, or **$7,680,000** rounded as of July 23rd, 2014.

Hypothetical Valuation –Assuming Use Restriction

We analyze the existing historic school improvement under the *hypothetical* assumption that beyond the existing historic designation, the District of Columbia, through approval of a proposed development plan, will limit use of the structure to an art gallery and restaurant, while also implementing the FSA and CBE programs as a requirement in the renovation of the existing building. For this valuation, we utilize a residual analysis to determine the selling prices or value of the end product and the costs of development, including entrepreneurial incentive (if applicable), are deducted to result in a supportable value reflecting the land and shell value.

The developer plans to rent a majority of the ground floor space as a restaurant. Base on our calculations the space would be ±8,164 rentable SF (RSF). Restaurant rents in the subject area are summarized following.

Location	Date	SF	Rent/SF (NNN)	Term
100 King Street, Alexandria, VA	1Q'14	7,350	$42.43	10 years
1118 King Street, Alexandria, VA	3Q'14	3,000	$36.80	5 years
700 6th Street NW, Washington, DC	2Q'12	6,710	$40.00	10 years
1201 Pennsylvania Avenue, NW, Washington, DC	2Q'12	8,468	$41.00	10 years
555 11th Street NW, Washington, DC	2Q'12	1,400	$70.00	10 years
1399 New York Avenue, NW, Washington, DC	2Q'12	2,314	$58.00	10 years

The restaurant leases average $48.04/SF NNN with a median of $41.72/SF NNN. Additionally, *CoStar* indicates face rents in the East End submarket currently averages $48.98/SF NNN. Based on the preceding information a market oriented rent for the restaurant space at the subject would be ±$45.00/SF NNN.

The balance of the space is planned for use as an art gallery and associated café and bookstore. As the top floors are slated for use by one operator, all of the space is considered rentable (beyond deduction already made for vertical penetrations into retail space) totaling ±36,975 SF. The only arts related lease we were able to confirm was at *Carroll Square* - 975 F Street NW in DC. The

Downtown Artist Coalition leased 6,552 SF of art studio space on the 2nd floor in mid-2008 for $7.50/SF NNN. This space was basically an open shell with limited buildout. As the subject will have similar, but slightly superior buildout, and a superior location in a superior building, our analysis assumes an $8.00/SF NNN subject rent.

Vacancy and Credit Loss - East End retail vacancy is currently ±4.2% and trending downward. A general vacancy allowance of 3% is assumed, with credit and collection loss anticipated at 1% of PGI.

Expenses - In order to estimate the expenses incurred by the subject, we utilize *Institute of Real Estate Management* (*IREM*) indicating expense range from $2.91/SF to $7.15/SF with median of $6.54/SF within the region. Without real taxes, we project $4.04/SF; with real taxes, we project an overall expense of $8.34/SF (see below).

Overall Capitalization Rate (OAR) - The most desirable source of rates is primary data from the market, derived from sales and discussions with market participants. Reported rates for 5 retail sales in the 3 years in DC ranged from 5.60% to 6.60%, with an average of 5.74%. The *PwC Real Estate Investor Survey* for 2Q'14 indicates the investment parameters of national retail properties and Net lease properties. The National Strip Shopping Center Survey indicates a range of OARs from 5.00% to 10.00% with an average of 7.09%, while Net Lease properties range from 6.00% to 8.50% with an average of 6.98%. An appropriate OAR for a renovated, stabilized, mixed-use subject at its location is estimated at 5.50%.

The reconstructed operating statement follows utilizing the aforementioned parameters:

Direct Capitalization

Rental Income:	Retail	$45.00	/SF	×	8,164	SF	$367,380
	Gallery	$8.00			36,975	SF	$295,800
Expense Reimbursements:							$376,000
Potential Gross Income (PGI):							**$1,039,180**
Vacancy/Collection Loss @ 4.0% PGI:							-$41,567
Effective Gross Income (EGI):							**$997,613**
Expenses							
Fixed:	Real Estate Taxes	$4.30					$194,098
	Insurance	$0.25					$11,285
Variable:	Utilities	$0.20					$9,028
	Maint., Repair & Services	$0.75					$33,854
	Admin. / Payroll	$2.40					$108,334
	Mgmt / Legal (2% EGI)	$0.44					$19,952
Total:		$8.34	/SF				-$376,550
Net Operating Income (NOI):							**$621,062**
NOI Capitalized at a 5.5% OAR:							**$11,292,044**

Based on the above, a newly renovated subject (with ground-level restaurant space and the balance galleries for showcasing contemporary art and an associated café and bookstore) would likely sell for ±$11,290,000 if completed and stabilized currently. To derive the *hypothetical* value assuming FSA and CBE encumbrances in its current physical state, we must deduct costs necessary to achieve the completed and stabilized newly renovated subject.

Development Costs – The developer's budget for the project totals $12,107,003, or $264.98/GSF. This includes a $986,000 hard cost contingency and $1,072,000 general contractor (GC) fee.

While the costs are not finalized, as the project is still in the planning phase, they are generally reasonable considering the limited buildout going into the gallery space.

The residual current value analysis for the subject *hypothetical* value follows.

Value As If Currently Completed and Stabilized	$11,292,044
Less Development costs	-$12,107,003
Residual Value	($814,959)

Residual analysis indicates a *hypothetical* value of **$0** (assuming a *market value* background, no negative value is applicable) as of July 23rd 2014. However, both entrepreneurial incentive (±10% of hard costs) and a substantial contingency (also ±10% of hard costs) are built into the preliminary costs. Removing the profit and contingency yields a slightly positive residual value ($171,041); while some rationale can be made for negating the entrepreneurial incentive and perhaps reducing or negating the contingency, this assumes limited anticipation of encountering unexpected development issues with a building needing extraordinary renovation and little incentive to do so (beyond public interest). As such, based on our analysis, we reconcile the current *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances) to be **$0** as of July 23rd 2014.

The estimated *marketing period* is ±12 months. The *exposure time* is also estimated to be ±12 months. The most probable buyer for the subject would be an owner user for all or part of the subject space given the usable atypical space yield or a non-profit entity utilizing subsidies.

Certification:

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and is our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- Mark A. Chaney and Gregory M. Zehe made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the persons signing this certification.
- We have not performed a previous appraisal of the subject property within the three years prior to this assignment.
- As of the date of this report, Gregory M. Zehe has completed the Standards and Ethics Education Requirement of the Appraisal Institute for Associate Members.
- As of the date of this report, Mark A. Chaney has completed the continuing education program of the Appraisal Institute.

The appraisal has also been prepared in conformance with the 2000 Edition of the UASFLA. Furthermore, Mark A. Chaney is appropriately certified within the District of Columbia to appraise the subject property.

Based upon our analyses, the *market value as is* (encumbered by FSA and CBE requirements) equates to **$7,680,000**; and the *hypothetical* value assuming a use restriction limiting the building to ground-level restaurant space with the balance of the building to be galleries for showcasing contemporary art and an associated café and bookstore (with FSA and CBE encumbrances) equates to **$0**. The values reflect the fee simple estate as of July 23rd, 2014 (the date of the most comprehensive inspection). Attached hereto is the analyses and reasoning for the opinions of value. Any separation of the signature pages from the balance of the report invalidates the conclusions.

Respectfully submitted,

Digitally signed by Mark A. Chaney
DN: cn=Mark A. Chaney, o=Chaney & Associates, Inc., ou=President, email=Mark.Chaney@CAI-value.com, c=US
Date: 2014.09.23 15:50:02 -04'00'

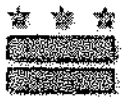
Mark A. Chaney, MAI

Gregory M. Zehe

CHANEY & ASSOCIATES
Commercial Real Estate and Business Valuation

Addenda:

This purchase order was delivered by Ariba Network. For more information about Ariba and Ariba Network, visit http://www.ariba.com.



From: **Deputy Mayor for Planning and Economic Development**
1100 4th Street, SW
Suite E450
Washington, DC 20024
United States
Phone: +1 (202) 4426934

To: **Chaney & Associates**
8508 White Post Court
Potomac, MD 20854
United States
Phone: +1 (301) 365-1285
Fax: +1 (301) 365-1286
Email: mark.chaney@verizon.net

Purchase Order

(New)
PO499780
Amount:$6,500.00 USD
Version: 1

COMMENTS

- by aribasystem, on Wednesday 16 Jul 2014 10:18 AM GMT-04:00
  ALL INVOICES SHALL BE SUBMITTED TO THE 'BILL TO' ADDRESS INDICATED ON THIS PURCHASE ORDER. INVOICES SHALL INCLUDE THE PURCHASE ORDER NUMBER, CONTRACT NUMBER (IF APPLICABLE), CONTRACTOR'S NAME AND ADDRESS, INVOICE DATE, QUANTITY AND DESCRIPTION OF GOOD(S) OR SERVICE(S) FOR WHICH PAYMENT IS BEING REQUESTED, REMITTANCE ADDRESS, AND CONTACT PERSON NAME AND PHONE NUMBER IF THERE IS A PROBLEM WITH THE INVOICE. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT.

- by aribasystem, on Wednesday 16 Jul 2014 10:18 AM GMT-04:00
  FOB is Destination unless specified otherwise

- by aribasystem, on Wednesday 16 Jul 2014 10:18 AM GMT-04:00
  ****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV*****

SHIP ALL ITEMS TO

Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Ave NW Suite 317
Washington, DC 20002
United States
Ship To Code: EB0-01
Phone: +9 (999) 9999999
Email: carine.yahaut@dc.gov

BILL TO

Deputy Mayor for Planning and Economic Development
1100 4th Street, SW Suite E450
Washington, DC 20024
United States
Phone: +1 (202) 4426934

DELIVER TO

Carine Yahaut
Deputy Mayor for Planning and Economic Development

LINE ITEMS

Line #	Part # / Description	Qty (Unit)	Need By	Price	Subtotal
1	Not Available *Appraisal services related to the 925 13th St NW project.*	6,500 (EA)	24 Jun 2014	$1.00 USD	$6,500.00 USD

ACCOUNTING

Percentage	Percentage	100
Comptroller Object	Description	PROF SERVICE FEES AND CONTR

OTHER INFORMATION

Bill To Contact:	LaShawn VanHorne
If used in conjunction with a contract award, purchase order is placed in accordance with all provisions of Contract Number:	DCEB-DMPED-10-BPA-APPRAISALS-MC
Requester:	Carine Yahaut
Delivery Date:	Tue, 24 Jun, 2014
PR No.:	RQ860084

Sub-total: $ 6,500.00 USD

Order submitted on: Wednesday 16 Jul 2014 10:18 AM GMT-04:00
Received by Ariba Network on: Wednesday 16 Jul 2014 10:18 AM GMT-04:00
This Purchase Order was sent by Government of the District of Columbia AN01000219125 and delivered by Ariba Network.

CHANEY & ASSOCIATES
Commercial Real Estate and Business Valuation

QUALIFICATIONS OF GREGORY M. ZEHE

Valuation Experience:

- **Chaney & Associates** – (October 2000 - present) *Senior Associate* of the firm specializing in commercial real estate and business valuations. Services include studies in valuation, feasibility, marketability, cost-benefit, pricing and rent projections, economic base, consumer profile, absorption, land-use strategy, and tax appeal. Jurisdictional specialization in the markets of the District of Columbia and the broader Washington-Baltimore CMSA. Commercial real estate experience includes office, warehouse, flex, industrial, retail, hotel, multi and single family, subdivision, and mixed-use markets. Experience in other aspects of the market include health care, historic, environmentally damaged and wetland properties; fractional ownership, investment, going-concern, insurable interests; air and transferable development rights.

- **Zehe Appraisal Service** - (1995 - September 2000) *Senior Appraiser* of the regional real estate appraisal firm serving northeastern Ohio. Performed all aspects of residential real estate valuation and review, specializing in the valuation of income producing multi-family properties. Served as member of the *FHA* approved fee panel. Management responsibilities included business development, project scheduling, and appraisal review.

- **Ganz Properties, Inc.** - (1994-1998) *President* of the regional real estate investment firm specializing in residential rehabilitation projects in the Greater Cleveland area. Responsibilities include the development of feasibility studies for all potential real estate acquisitions, real estate appraisal, contract negotiations, and management of contracted labor force.

Jurisdictional Certification:	State of Maryland - Certified General (#11063)
General Education:	Kent State University *Bachelor of Science, Industrial Technology*
Appraisal Education:	Appraisal Institute – 550 Advanced Applications Appraisal Institute – 540 Report Writing & Valuation Appraisal Institute – 530 Adv. Sales Comparison & Cost Approach Appraisal Institute – 520 Highest & Best Use & Market Analysis Appraisal Institute – 510 Advanced Income Capitalization Appraisal Institute – 420 Business Practices & Ethics Appraisal Institute – 410 15-Hour National USPAP Appraisal Institute – 320 General Applications Appraisal Institute – 310 Basic Income Capitalization Appraisal Institute – 120 Appraisal Procedures Appraisal Institute – 110 Appraisal Principals
Appraisal Experience:	Appraisal Institute – Specialized Experience 3,000 Hours Awarded Appraisal Institute – Initial Experience 3,000 Hours Awarded
Memberships:	Appraisal Institute – *Associate Member*

CHANEY & ASSOCIATES
Commercial Real Estate and Business Valuation

QUALIFICATIONS OF MARK A. CHANEY

Valuation Experience:

- **Chaney & Associates** - *President* (January 1996 - present) of the firm specializing in commercial real estate and business valuations. Services include valuation, appraisal review, feasibility, marketability, cost-benefit, pricing and rent projections, economic base, consumer profile, absorption, land-use strategy, and tax appeal. Jurisdictional specialization in the markets of the District of Columbia and the broader Washington-Baltimore CMSA. Commercial real estate experience includes office, warehouse, flex, industrial, retail, hotel, multi and single family, subdivision, mixed-use, environmentally damaged, "green" and special purpose properties. Experience in other aspects of the market include health care, historic preservation and conservation easements, distressed and wetland properties; condemnation, partial, investment, going-concern, and insurable interests; air and transferable development rights.

- Admitted to testify as an expert witness in the field of commercial real estate appraisal in the Superior Court of the District of Columbia, the United States District Court for the District of Columbia, the United States Bankruptcy Court for the District of Columbia, and the Circuit Court for Montgomery County, Maryland.

- **Joseph J. Blake and Associates** - *Vice President* (January 1992 - 1996) of the national real estate appraisal and consultation firm in the Mid-Atlantic Office. Specialized in District of Columbia property, and the complex valuation of commercial real estate in both conventional and special-purpose markets of the broader Washington-Baltimore CMSA. Management responsibilities included portfolio valuation on a national basis, appraisal review, staff administration, accounting, and business development.

- **MNC Financial** - *Senior Appraisal Officer* (1990-2) in the Washington Office of the fourth largest bank-holding company in the nation. Banking subsidiaries included Maryland National Bank, American Security Bank (D.C.), and Virginia Federal Savings and Loan, all which became NationsBank, then Bank of America. Real estate appraisal and appraisal review included all commercial product types on both local and national levels. Management responsibilities included division communication among lending lines, staff administration and training.

- **Appraisal Partners** - *Associate* (1989-90) of this regional firm specializing in the valuation of Maryland, Virginia, and District of Columbia real estate.

Jurisdictional Certification:	District of Columbia -	Certified General (#10107)
	State of Maryland -	Certified General (#1980)
	Commonwealth of Virginia -	Certified General (#4001001554)
	State of West Virginia -	Certified General (#CG377)
	Commonwealth of Pennsylvania -	Certified General (#GA003646)
	State of Delaware -	Certified General (#X1-0000355)
General Education:	University of Maryland UC -	BS in Business Management
Memberships:	Appraisal Institute -	MAI (#10909)

Appraisal Institute™

Professionals Providing Real Estate Solutions

925 13th STREET, NW (Franklin School)
SOURCES & USES

Sources

Developer Equity	$ 2,000,000
Donations	$ 11,243,558
Total Sources	**$ 13,243,558**

Uses

Property Acquisition	$ 3
Soft Costs	$ 3,312,555
Hard Costs	$ 9,931,000
Total Uses	**$13,243,558**

Sources

In lieu of traditional bank financing, the Developer, Institute for Contemporary Expression ("ICE-DC"), plans to raise the total amount of funds necessary to fund all acquisition, hard and soft costs.

The Developer has structured a cohesive, sequential Fundraising Plan consisting of two major components: 1) a philanthropic market study in which they will identify the philanthropic potential of a campaign to raise the funds necessary to renovate and rehabilitate the Franklin School, and then develop strategies to achieve that philanthropic potential; and 2) a fundraising campaign to implement the plan developed based on the philanthropic market study. Key components of the Campaign Fundraising Plan include a campaign strategy; campaign gift chart; individual and institutional prospect identification and qualification strategies; development of cultivation and solicitation strategies; fundraising dinners and events; art fair attendance; individual one-on-one meetings; development of a Board of Trustees; educational partnerships; gift naming and recognition policies; donor acknowledgement and stewardship processes; and the development of an Annual Giving Program.

The Developer assumes that it will raise approximately half of the capital funds (approximate $6.5 million) in lump sum cash pledges and the remaining funds in pledges payable over a 3-5 year period. The Developer will arrange for a revolving construction loan to fund the remaining upfront project costs (approximately $6.7 million) in reliance on the multi-year pledges not yet collected from donors.

No permanent financing is needed as the loan will be sized based upon the total pledges secured, then repaid as pledged donations are received and before the loan matures.

Uses

The Property Acquisition cost consists of the following payments to the District: 1) Disposition Agreement Payment ($1.00); 2) Closing Payment ($1.00); and 3) Annual ground rent ($1.00).

LAND DISPOSITION AGREEMENT
(by Ground Lease)

THIS LAND DISPOSITION AGREEMENT (by Ground Lease) (this "**Agreement**"), is made effective for all purposes as of the _____ day of _____, 201__, between (i) **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) **DevICE, LLC**, a District of Columbia limited liability company ("**Developer**").

RECITALS:

R-1. District owns the real property located at 925 13th Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0808 in Square 0285 upon which is located the Franklin School (the "**Property**"), which Property is more particularly described in **Exhibit** attached hereto.

R-2. District desires to convey the Property (hereinafter defined) to Developer by ground lease to be developed in accordance with this Agreement.

R-3 The disposition of the Property to Developer was approved on _____, 20__ by the Council of the District of Columbia pursuant to the _____ Disposition Approval Resolution of 20__ and the _____Surplus Declaration and Approval Resolution of 20__ (collectively, the "**Resolutions**"), subject to certain terms and conditions incorporated herein.

R-4 The Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

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

ARTICLE I
DEFINITIONS

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

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled

by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

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

"**Anti-Deficiency Laws**" has the meaning set forth in Section 13.16.1

"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.

"**Approvals**" means all applicable jurisdictional governmental approvals necessary to implement the Project, and that pertain to any alley closings, subdivision, tax lot designations, and other approvals relating to zoning or land use, but expressly excluding the Permits.

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

"Architect" means the architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

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

"**BZA**" means the District of Columbia Board of Zoning Adjustment.

"CBEs" is defined in Section 7.5.

"**CBE Agreement**" is that agreement between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project, which agreement is attached as **Exhibit F**.

"Closing" is the closing consummated pursuant to this Agreement, which shall include the execution and delivery of the Ground Lease and the other closing documents described herein.

"**Closing Date**" shall mean the date on which Closing occurs.

"**Closing Payment**" is as defined in Section 2.2.3.

"Commencement of Construction" means Developer has: (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for renovations to commence, and (iv) obtained the Permits and commenced renovation of the Property pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term "**Commencement of Construction**" does not mean (x) site

exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions, or (y) any cleaning or minor repair or demolition (approved by District) performed by Developer to prepare the Property for tours or use for fundraising events or other related activities including but not limited to showing the Property to prospective donors to ICE-DC, IDEARTS and/or Developer.

"**Community Participation Program**" is as defined in Section 4.6.1.

"**Concept Plans**" are the design plans, submitted by Developer and approved by District as of the Effective Date herein, which serve the purpose of establishing the major direction of the design of the Project, which Concept Plans are attached hereto as **Exhibit B**.

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

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

"**Construction Drawings**" mean the Concept Plans, the Schematic Plans, the Design Development Plans and the Construction Plans and Specifications, which shall be submitted by Developer to District and subject to District's approval, pursuant to Article 4.

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

"**DDOE**" means the District of Columbia Department of the Environment.

"**Debt Financing**" shall mean the financing to be obtained by Developer from an Institutional Lender to fund the costs set forth in the Project Budget, other than the Equity Investment.

"**Design Development Plans**" are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images; (ii) illustrations and wall sections of façade design elements and other important character elements (1/2" –1" = 1'); (iii) exterior material samples, and (iv) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

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

"**Developer Default**" is defined in Section 8.1.1. "**Developer's Agents**" mean Developer's agents, employees, consultants, contractors, and representatives.

"Development and Completion Guaranty" is that guaranty, attached hereto as **Exhibit D**, to be executed by Guarantors, which shall bind the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Agreement, the Ground Lease and the Construction and Use Covenant.

"Development Plan" means Developer's detailed plans for developing, constructing, financing, using, and operating the Project, pursuant to the Permitted Uses. Specifically, Developer plans to redevelop the Property for the following uses: (i) approximately 21,572 square feet of the Property shall be used as galleries for showcasing contemporary art in rotating exhibitions open to the public as well as for contemporary music and/or dance performances, poetry and other readings of literature, and for educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors, (ii) approximately 5,826 square feet of the Property shall be used as a restaurant; and (iii) approximately 5,625 square feet of the Property shall be used as a bookstore and a café.

"**Disapproval Notice**" is defined in Section 4.2.2.

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

"**Disposition Agreement Payment**" is defined in Section 2.2.2.

"**District Default**" is defined in Section 8.1.2.

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

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

"EastBanc" means EastBanc, Inc, a District of Columbia corporation, a Member of Developer.

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

"Environmental Laws" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), 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 Investment**" shall mean all funding that is required for the development and construction of the Project in excess of Debt Financing, but specifically excluding funding in the form of a mezzanine loan.

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

"First Source Agreement" is that agreement between Developer and DOES, entered into in accordance with Section 7.6 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project, which agreement is attached as **Exhibit E.**

"**Final Project Budget**" is defined in Section 9.4.2.

"Force Majeure" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of Developer, Developer's Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by Developer, Developer'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 Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specifications are no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

"Fundraising Plan" is defined in Section 9.5.

"**Green Building Act**" means that certain act of the District of Columbia Council enacted as D.C. Law 16-234 (effective March 8, 2007) and codified as D.C. Code § 6-1451.01, *et. seq.*

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

"**Ground Rent**" is defined in Section 2.1.

"**Guarantor(s)**" is EastBanc, and any successor(s) approved by District pursuant to Section 4.5.

"**Guarantor Submissions**" shall mean (a) audited, if available, or (b) if audited are not available, reviewed financial statements balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information certified by an officer or manager of such Guarantor, as District may reasonably request, for the two (2) years prior to submission, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete).

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

"**ICE-DC**" is Institute for Contemporary Expression - DC, a District of Columbia not for profit corporation, an Affiliate of IDEARTS, formed for the purposes, amongst other things, of operating galleries in the Project and providing educational programs open to the public and joint programs with District of Columbia traditional public schools and public charter schools and local universities.

"**IDEARTS**" means IDEARTS, LLC, a District of Columbia limited liability company, a Member of Developer.

"**Improvements**" mean landscaping, hardscape, and improvements to be constructed, renovated or placed on the Property in accordance with the Development Plan and Approved Plans and Specifications, which shall be deemed to be the property of District; provided, however, that all movable goods, inventory, office furniture, equipment, trade fixtures and any other movable property belonging to the ground lessee or its subtenants that are not permanently

affixed to the Property shall remain the property of the ground lessee, or its subtenants, as the case may be.

"**Institutional Lender**" means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) a governmental agency; or (viii) a charitable organization regularly engaged in making loans secured by real estate.

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

"Material Change" means (i) any change in size or design from the Approved Plans and Specifications substantially affecting the general appearance or structural integrity, exterior walls and elevations, or a five percent (5%) or greater change in the lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications; and (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications.

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

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

"**Other Submissions**" is defined is Section 4.6.

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

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

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

"Permitted Exceptions" has the meaning given it in Section 2.4.2.

"**Permitted Uses**" means the permitted uses set forth in the Ground Lease, and no other uses.

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

"**Progress Meetings**" is defined in Section 4.4.

"**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 Law concerning organized crime; or

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

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

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

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, this Agreement, the Ground Lease and the Construction and Use Covenant.

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

"Project Deposit" has the meaning given it in Section 2.2.1.

"Project Funding Plan" has the meaning given it in Section 9.1.

"Property" means all right, title, and interest of District in property located at 925 13th Street N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0808 in Square 0285 and upon which is located the Franklin School, together with such additional property as is required for set-backs and appurtenant rights, as more particularly described in the legal description set forth in **Exhibit A** attached hereto and incorporated by reference, together with all improvements thereon and all appurtenances thereto as of the Effective Date.

"Resolutions" is defined in the Recitals.

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

"Scheduled Closing Date" is defined in Section 6.1.1.

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32" = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project redevelopment program (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Project redevelopment program; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 4.2.2 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE CONSTRUCTION DRAWINGS ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH CONSTRUCTION DRAWINGS]"; (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Settlement Agent**" means Fidelity National Title Insurance Company, as agent for Developer, the title agent selected by Developer and mutually acceptable to Developer and District.

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

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

"**Substantial Completion**" is defined in the Construction and Use Covenant.

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

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

ARTICLE 2
GROUND LEASE; PROJECT DEPOSIT; CLOSING PAYMENT; CONDITION OF PROPERTY

2.1. GROUND LEASE OF PROPERTY

Subject to and in accordance with the terms of this Agreement, District shall lease to Developer and Developer shall lease from District, the Property. At Closing, the Property shall be leased to Developer pursuant to an unsubordinated, "triple net" ground lease (the "**Ground Lease**") in the form attached hereto as **Exhibit H**. The Ground Lease shall have the term of fifty (50) years, which term will commence as of the date of Substantial Completion of the Project improvements constructed in accordance with the Approved Plans and Specifications. The annual ground rent payable by Developer to District under the Ground Lease shall be One Dollar and 00/100 Dollar ($1.00) (the "**Ground Rent**").

2.2 PROJECT DEPOSIT, DISPOSITION AGREEMENT PAYMENT AND CLOSING PAYMENT

2.2.1 Project Deposit

Developer has heretofore delivered to District a deposit in connection with the request for proposal process in the form of a letter of credit in the amount of One Hundred Thousand Dollars and 00/100 ($100,000.00) (the "**Project Deposit**"). Except as hereinafter expressly provided to

the contrary, the Project Deposit is non-refundable to Developer, and shall be returned to Developer solely in the event that (i) Developer proceeds to Closing in accordance with the terms of this Agreement, or (ii) this Agreement is terminated in accordance with Sections 2.5, 2.6.2, 5.1.2 or 8.3 hereof.

2.2.2 Disposition Agreement Payment

Upon execution of this Agreement, Developer shall pay to District a payment as nominal consideration for the execution and delivery of the Agreement in the amount of One and 00/100 Dollar ($1.00) (the "**Disposition Agreement Payment**").

2.2.3 Closing Payment

At Closing hereunder Developer shall pay to District a payment as nominal consideration for the execution and delivery of the Ground Lease in the amount of One and 00/100 Dollar ($1.00) (the "**Closing Payment**").

2.3 CONDITION OF PROPERTY

2.3.1 Access to District Property.

(a) Entry to the Property by Developer shall be in accordance with the terms of the Right of Entry Agreement, dated March 25, 2014, entered into by District and Developer, as it may be extended from time to time. In the event of any conflict between the terms of this Agreement and the terms of said Right of Entry Agreement, the terms of this Agreement shall control. Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter, collectively, "**Studies**") as Developer deems necessary or desirable to evaluate the Property; provided, however, Developer's Agents shall not conduct any invasive Studies on the Property without the prior written consent of District and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies.

(b) Developer and Developer's Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including transportation and disposal of materials. In addition, Developer and Developer's Agents shall be obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the Property and while conducting any Studies.

(c) Prior to entering on the Property, Developer shall provide District (i) written notice, including a written description of the intended Studies, (ii) evidence of insurance, as required under the terms of this Agreement, and (iii) copies of any required licenses and notices in accordance with Section 2.3.1(b).

(d) In the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the Property while conducting the Studies, or otherwise during its entry

on the Property, which are determined to be Hazardous Materials as defined herein, the Developer shall notify District and DDOE within one (1) business day after its discovery of such Hazardous Materials. Thereafter, within ten (10) days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or DDOE shall give written notice to Developer of: (i) its findings and (ii) its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall give written notice to Developer of its decision. Upon approval of the Disposal Plan by DDOE, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials which have not been already disturbed or removed until after Closing. Within seven (7) business days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property.

(e) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs, liabilities, damages, expenses, mechanic's liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any entry on the Property or Studies or other activities at the Property conducted by Developer or Developer's Agents. This provision shall survive Closing or the earlier termination of this Agreement.

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

(g) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11 and Developer shall restore the Property after any Studies are completed to its condition immediately before such Studies were performed.

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

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), District hereby represents and warrants to Developer that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from the Property during District's ownership. Information pertaining to underground storage tanks and underground storage tank removals of which District has received notification is on file with DDOE, 51 N Street, N.E., Third Floor, Washington, D.C., 20002, telephone (202) 535-2525. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations and does not constitute a representation or warranty by District.

2.3.4 AS-IS. DISTRICT SHALL LEASE THE PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION WITH ALL FAULTS AND DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS SET OUT IN SECTIONS 2.3.3, 2.7 AND 3.1 HEREOF, AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 Developer hereby acknowledges that title to the Property has been investigated by Developer and is deemed acceptable, effective as of the Effective Date.

2.4.2 At Closing, District shall lease the Property to Developer "AS IS" and subject to the Permitted Exceptions. The **"Permitted Exceptions"** shall be the following collectively: (i) all title matters, encumbrances or exceptions of record as of the Effective Date; (ii)

encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (ii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iii) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the District Property or any portion thereof by Developer or Developer's Agents; (iv) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (v) real property taxes and water and sewer charges which are not due and payable as of Closing, subject to the obligation to pro-rate taxes on the Property as set forth in this Agreement and (vi) any easements, rights-of-way, exceptions, and other matters of record as of the Effective Date.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date, or create an additional encumbrance on the Property not removed by District prior to Closing, except as expressly required by Applicable Law or as permitted by this Agreement.

2.5. RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by District. If a casualty occurs before Closing and District gives Developer written notice (the "**Election Notice**") that it elects not to rebuild the improvements to substantially the same condition as they were prior to the casualty, then Developer shall have the right to terminate this Agreement by giving written notice to District within thirty (30) days after receipt of District's Election Notice, in which event the Project Deposit shall be returned to Developer. Nothing contained herein shall affect Developer's indemnification obligations set forth in this Agreement, including, without limitation, those obligations set forth in Section 2.3.1 and Article 11 hereof.

2.6 CONDEMNATION

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

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, District shall release the Project Deposit to Developer, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination, and District shall have the right to any and all condemnation proceeds.

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

Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall be paid to Developer at Closing; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall lease the Property without any adjustment to the rent and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District. In either event, District (as the ground lessor hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

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

2.8 LICENSE AGREEMENTS

Prior to Closing and the execution and delivery of the Ground Lease, District, at the request of Developer, may enter into one or more license agreements in a form mutually acceptable to Developer and District for the purpose of permitting Developer , IDEARTS, and/or their Affiliate ICE-DC access to the Property to clean the interior of the Property, to conduct demolition of interior partitions in accordance with a plan approved by District, to install temporary lighting and utilities, including temporary toilet facilities, and to conduct fund-raising activities.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution, delivery and performance of this Agreement by District and the transactions contemplated hereby between District and Developer shall have been approved by all necessary parties prior to Closing and District has the authority to dispose of and ground lease the Property, pending expiration of the authority granted in the Resolution, unless extended.

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

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

(d) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which District is subject, or any agreement, contract or Law to which District is a party or to which it is subject.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for a period of two (2) years. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.2.1 Developer hereby represents and warrants to District as follows:

(a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing, and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. IDEARTS and EastBanc are the sole Members of Developer. Neither Member nor any Person owning directly or indirectly any interest in Developer or any Member is a Prohibited Person.

(b) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement shall constitute the valid and binding obligation of Developer, enforceable in accordance with its terms, subject to rights of creditors generally.

(c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Applicable Law to which Developer is subject, or

(iii) any agreement or contract to which Developer is a party or to which it is subject.

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

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

(f) Developer's lease of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Construction Drawings and not for speculation in land holding.

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

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of two years. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

ARTICLE 4
SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS; APPROVAL OF GUARANTORS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the following Construction Drawings by the applicable "Outside Completion Dates" indicated in the Schedule of Performance:

(a) One hundred percent (100%) Schematic Plans, consistent with the approved Concept Plans and Development Plan;

(b) Sixty percent (60%) complete Design Development Plans consistent with the approved Schematic Plans and Development Plan;

(c) One hundred percent (100%) Construction Plans and Specifications.

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

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

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect.

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

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

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

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

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Construction Drawings by Developer and provide a written response thereto, within twenty (20) days after its receipt of the same. If District fails to respond with its written response to a submission of any Construction Drawings within such twenty (20) day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to approve, conditionally approve, or disapprove such Construction Drawings within ten (10) days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given, provided such Construction Drawings comply with the requirements contained in Section 4.1.2.

4.2.3 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval, unless such requirements will materially increase the cost of the construction or materially adversely impact the operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District permits deviation from the Schedule of Performance for purposes of addressing the District's objection), or violate Applicable Laws. Any Approved Plans and Specifications may

not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.4 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Construction Drawing, Developer may request such extension in writing prior to such deadline, and, if District finds that Developer's request is based on good cause, District may, in its sole discretion, grant such extension by written notice to Developer.

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

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No Material Changes to the Approved Plans and Specifications shall be made without District's prior written approval. If Developer desires to make any Material Changes to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for approval, which approval shall be granted or withheld in District's sole discretion. District agrees that it shall respond to any such request within the time periods, and in accordance with the procedures, set forth in Section 4.2.2 with regard to original Construction Drawings.

4.4 PROGRESS MEETINGS

During the preparation of the Construction Drawings, District's staff and Developer shall hold monthly progress meetings (each, a "**Progress Meeting**"), during which meetings Developer and District staff shall coordinate the preparation and submission of the Construction Drawings as well as their review by District.

4.5 GUARANTY OF COMPLETION; BONDING

4.5.1 Developer shall deliver at Closing one or a combination of the following that is acceptable to District: (i) a labor and materials payment bond or bonds for the Property in an amount that is not less than one hundred percent (100%) of all costs of construction included in the applicable Final Project Budget not yet paid as of the effective date of the bond; (ii) a performance bond or bonds in an amount that is no less one hundred percent (100%) of all costs of construction included in the applicable Final Project Budget not yet paid as of the effective date of the bond; (iii) a Development and Completion from one or more Guarantors approved by District; (iv) letters of credit in form acceptable to District; or (v) some combination of the foregoing or other items that are acceptable to District.

4.5.2 In the event that District approves a Guarantor, then at any time upon District's request, but in any event no later than thirty (30) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its sole discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred, Developer shall, within ten (10) Business Days after notice from District, identify a proposed substitute Guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute Guarantor.

4.6 COMMUNITY PARTICIPATION PLAN

4.6.1 Community Participation Plan. Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that the Developer proposes to submit to the public. The Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Developer shall submit such documentation to District promptly following each such meeting. Developer's initial Community Participation Program is attached hereto as **Exhibit J**. Within sixty (60) days prior to Closing, Developer shall provide to District an updated Community Participation Plan.

4.6.2 Community Benefits. Developer shall provide and maintain the following community benefits for the term of the Ground Lease:

(a) Educational programs open to the public.

(b) Joint programs with the District of Columbia public and charter schools, and local universities.

(c) Training programs for local high school students in the restaurant.

(d) Donation of a percentage of the restaurant's gross receipts and food to a local organization serving local people in need of assistance.

(e) Coordination with the National Park Service and the District regarding execution of outdoor art events, activities, programs and performances in Franklin Park.

4.7 CONSTRUCTION CONSULTANT.

On or before the Commencement of Construction, Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by the District, on such terms as the District may approve, (a) to review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Agreement and the Construction and Use Covenant , (b) to report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) to review and approve whether the construction of the Project is consistent with the requirements of this Agreement and the Construction and Use Covenant, and (d) to review and report to the District

on the District's issuance of the Final Certificate of Completion. The Developer and the Architect shall deliver reports from time to time to the Construction Consultant to respond to requests for information needed by the Construction Consultant to fulfill its obligations to issue reports pursuant to this Section 4.7, and the Construction Consultant shall promptly report any issues or problems to the District and Developer. The Construction Consultant shall provide such certifications as are provided in this Agreement and the Construction and Use Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount allocated therefor in the Project Budget or Final Project Budget.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

(a) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date.

(b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

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

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

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

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

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Project Deposit to Developer and the Parties shall be released from any further liability or obligation hereunder

except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to ninety (90) days to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, in no event shall Closing occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to lease the Property to Developer or its permitted assignee pursuant to the terms of the Ground Lease and to perform the other obligations it is required to perform on the Closing Date shall be subject to the following conditions precedent:

(a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date.

(b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

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

(d) District's authority, pursuant to the Resolutions, to proceed with the disposition by ground lease, as contemplated in this Agreement, shall have not previously expired.

(e) The Development Plan and all Construction Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4.

(f) Developer has submitted its updated Community Participation Program, which shall have been approved by District pursuant to Section 4.6.

(g) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to lease the Property and proceed with the development of the Project in accordance with the Approved Plans and Specifications and the Construction and Use Covenant.

(h) Developer shall not be in default under the terms of the CBE Agreement and First Source Agreement.

(i) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.

(j) Developer shall have provided satisfactory evidence of its authority to lease the District Property and perform its obligations under this Agreement.

(k) Developer shall have applied for and obtained all necessary Approvals, including, if required, approval of the Project from the Historic Preservation Review Board.

(l) Developer shall have obtained all Permits required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

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

(n) Developer shall have secured District's approval and shall have secured all Debt Financing and the Equity Investment necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(o) There shall be no changes to the Project Funding Plan or the Project Budget, except to the extent such changes have been previously approved by District.

(p) Developer shall have executed a construction contract with its general contractor for the Project.

(q) There shall have occurred no material adverse change in the financial condition of the Guarantor(s) from the effective date of the information provided to District in connection with its approval of the Guarantor(s) to the Closing, subject to Section 4.5.2.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Developer and draw on the Project Deposit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to ninety (90) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (ii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, District may again proceed under clause (i) above, in its sole discretion. The foregoing notwithstanding, in no event shall Closing occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect.

ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 The Closing Date shall be held on or before the date ("**Scheduled Closing Date**") identified in the Schedule of Performance. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after [insert date here which is two years after date of Resolutions] (the "**Outside Closing Date**"), pursuant to the Resolution and D.C. Official Code § 10-801(d) without first obtaining additional approval from the Council. Nothing contained herein shall require District to seek such additional approval to extend its authority. Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.1.2 Closing shall not occur later than the Scheduled Closing Date, except: (a) by the mutual agreement of the Parties, or (b) if delay results, despite the best efforts of Developer, from the failure of the government of the District of Columbia or other governmental authority having jurisdiction over the Property to grant Developer any Permit (despite timely application therefor), then the Scheduled Closing Date shall be extended day-for-day during the period of such delay, but in no event not more than sixty (60) days nor later than the Outside Closing Date.

6.2 DELIVERIES AT CLOSING

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

(a) the Ground Lease for the Property and any Memorandum of Ground Lease related thereto;

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

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

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

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

(a) the Ground Lease and any Memorandum of Ground Lease related thereto, and all Ground Rent due thereunder as of the Closing Date;

(b) the Closing Payment, as described in Section 2.2.3;

(c) any funds if so required by the Settlement Statement to be delivered by Developer at Closing;

(d) any documents required to close on the Equity Investment and Debt Financing for Developer's construction of the Project;

(e) the fully executed Development and Completion Guaranty;

(f) the Payment Bond and Performance Bond;

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

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

(i) copies of all (i) Permits, and (ii) Approvals, including, if required, approval of the Project by the Historic Preservation Review Board;

(j) a copy of any amendments to the fully executed First Source Agreement and the CBE Agreement;

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

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

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

(iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;

(iv) Any financial statements of Developer that may be requested by District;

(v) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this

Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound.

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

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Memorandum of Ground Lease and the Construction and Use Covenant, which documents shall be recorded in the Land Records prior to any documents related to the financing obtained by Developer.

6.3.2 At Closing, Developer shall be responsible for and pay all costs pertaining to the transfer and financing of the Property, including, without limitation,: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) applicable D.C. Real Estate Transfer and Recordation Taxes, (5) fees of brokers engaged by Developer, if any, and (6) all Settlement Agent's fees and costs.

ARTICLE 7
DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO DEVELOP PROJECT AND CONSTRUCT IMPROVEMENTS

7.1.1. Developer shall renovate the building on the Property, and shall construct, reconstruct, use, maintain and operate the Improvements in accordance with the requirements contained in this Agreement, the Development Plan, the Schedule of Performance, the Construction and Use Covenant, and the Ground Lease. Developer shall cause the Commencement of Construction to occur no later than the date set forth therefor in the Schedule of Performance. The Project Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer.

7.1.2 As assurance of the above and of the covenants contained in the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors on or before Closing.

7.2 ISSUANCE OF PERMITS

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

7.3 SITE PREPARATION

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

7.4 [NTENTIONALLY OMITTED]

7.5 OPPORTUNITY FOR CBEs

Prior to the Effective Date, Developer has entered into an agreement with DSLBD that requires Developer, at a minimum, to contract with Certified Business Enterprises ("**CBEs**") for at least thirty-five percent (35%) of the contract dollar volume of costs of construction as set forth in the Final Project Budget, and shall contain such other provisions as are required by DSLBD.

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor's Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, prior to the Effective Date, Developer has entered into a First Source Agreement with DOES that, among

other things, requires Developer to: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by the Project, all in accordance with such First Source Employment Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council. The parties acknowledge that the District is not providing any direct governmental subsidy to Developer in connection with the development of the Project.

7.7 GREEN BUILDING REQUIREMENTS

Developer shall construct the Project in accordance with the Green Building Act and District's Stormwater Management Program as set forth in 21 DCMR, Chapter 5. In addition, Developer shall submit with its building permit application a LEED checklist indicating that the Project improvements are designed to include sustainable design features such that the Project improvements meet the standards for certification as a "LEED Certified" building. Developer shall also register the building with the U.S. Green Building Council, shall construct the Project improvements in accordance with the building permit, and shall use commercially reasonable efforts to obtain LEED certification at the "Certified" level for Project improvements once construction has been completed.

ARTICLE 8
DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty days (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional thirty (30) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

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

Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

8.2 DISTRICT REMEDIES IN THE EVENT OF A DEVELOPER DEFAULT

In the event of Developer Default under this Agreement, District may terminate this Agreement and, as its sole and exclusive remedy, receive as liquidated damages, the Project Deposit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications with regard to the development and construction of the Project and all Other Submissions, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment.

8.3 DEVELOPER REMEDIES IN THE EVENT OF A DISTRICT DEFAULT

In the event of District Default, Developer may, at its election, either: (i) terminate this Agreement whereupon District will release the Project Deposit to Developer and the Parties shall be released from any further liability or obligation hereunder except those liabilities or obligations that expressly survive termination of this Agreement, or (ii) pursue an equitable action for specific performance against District. In no event shall District be liable for any monetary damages, including compensatory, consequential, punitive or special damages hereunder.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

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

ARTICLE 9
FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources, Debt Financing and any Equity Investment), which plan is attached hereto as

Exhibit K (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). Developer shall not modify the Project Funding Plan without the prior approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall be responsible for arranging all debt financing and equity required to fund 100% of the redevelopment of the Property, and District shall incur no liability whatsoever should Developer fail to obtain or close on financing the redevelopment of the Property. District shall have no obligation to provide any public subsidy and/or loan in connection with the Project. District will cooperate with Developer and Developer's lender(s) in connection with Developer's efforts to finance the Project. The Ground Lease shall not be subordinated to any lien(s) securing any of Developer's financing of the Project.

9.2 DEBT FINANCING AND EQUITY INVESTMENT

9.2.1 Beginning at Closing (and as further provided in the Ground Lease) Developer shall not obtain any Debt Financing or engage in any other transaction, including any Equity Investment, that shall create a Mortgage or other encumbrance or lien upon the Property or Developer's interest in the leasehold, or include sale of membership interests in Developer, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property, without the prior written approval of District, in its sole and absolute discretion. Notwithstanding the foregoing, the identity of all funding sources, and the structure of any proposed Equity Investment (which may involve the assignment of membership interests in Developer) set forth on the attached Project Funding Plan shall be deemed approved by District.

9.2.2 Any such Debt Financing or Mortgage shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget and to the payment of the rent due under the Ground Lease; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distributions to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to Developer shall be sufficient to complete construction of the Project.

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

(a) The commitment or agreement between Developer and the holder(s) of such Debt Financing or Mortgage, or provider of such Equity Investment, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing or Equity Investment, certified by Developer to be true and accurate; and

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing, and a copy of any amended organizational documents of Borrower or other loan documents related to the Equity Investment.

9.3. NO PUBLIC FUNDING

Under no circumstances is the District obligated to extend any loan to Developer or grant any funds to Developer in connection with the financing of the Project by Developer, and District shall incur no liability whatsoever should Developer fail to obtain or close on financing for the Project. Even though District incurs no financial obligations under this Agreement, the activities of District remain subject at all times to the Anti-Deficiency Laws, as further set forth in Section 13.16.1 hereof.

9.4 PROJECT BUDGET

9.4.1 As of the Effective Date, Developer has provided to District its Initial Project Budget, which is attached hereto as **Exhibit L** and incorporated herein.

9.4.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval. Upon approval by District, such revised Project Budget shall be the "**Final Project Budget**". Such Final Project Budget shall be attached as an Exhibit to the Construction and Use Covenant.

9.4.3 Developer shall not modify the Final Project Budget without the prior approval of District.

9.5 FUNDRAISING PLAN

Developer has prepared a Fundraising Plan on behalf of itself and its Affiliates that are connected to the development and operation of the Project (the "**Fundraising Plan**"), which sets forth in detail the activities to be undertaken by Developer and its Affiliates to solicit charitable and other donations. The Fundraising Plan approved by the District is attached hereto as **Exhibit M**.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

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

10.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 10.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its

Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer.

10.3 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer shall carry and maintain in full force and effect the following insurance policies, or may cause its general contractor to maintain such policies, upon approval of District.

(a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars ($3,000,000.00) per occurrence, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(c) Professional Liability Insurance - During development of the Project and for a period of not less than five (5) years thereafter, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less

than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

(d) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section 11.1 shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

11.2 INDEMNIFICATION

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

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

The Office of the Attorney General for the District of Columbia
441 4th Street, N.W., 10th Floor South
Washington, D.C. 20001
Attn: Deputy Attorney General, Commercial Division

12.2 TO DEVELOPER

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

DevICE, LLC
c/o EastBanc, Inc.
3307 M Street, NW, Suite 400
Washington, D.C. 20007
Attn: Anthony Lanier

And:

c/o IDEART, LLC
3304 R Street, NW
Washington, DC 20007

With a copy to:

Roberta F. Colton, Esquire
Real Estate Counselors, PLLC
1325 G Street, NW, Suite 500
Washington, DC 20005

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

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

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

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either

Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Outside Closing Date and shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, member or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

13.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to survive and shall not merge with the provisions of the Ground Lease.

13.5 TITLES OF ARTICLES AND SECTIONS

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

13.6 SINGULAR AND PLURAL USAGE; GENDER

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

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.9 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.10 TIME OF PERFORMANCE

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

13.11 SUCCESSORS AND ASSIGNS

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

13.12 THIRD PARTY BENEFICIARY

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

13.13 WAIVER OF JURY TRIAL

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

13.14 FURTHER ASSURANCES

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

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or

provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

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

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

13.17 SEVERABILITY

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

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.19 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

13.20 EACH PARTY TO BEAR ITS OWN COSTS

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

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

DISTRICT;

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name: _____
Title: Deputy Mayor for Planning and Economic Development

Approved as to legal sufficiency:

Office of the Attorney General for the District of Columbia

By: _____
Assistant Attorney General
Date: _____

DEVELOPER;

DevICE, LLC, a District of Columbia limited liability company

By: IDEARTS, LLC, a District of Columbia limited liability company, Member

By: _____
Name: _____
Title: _____

By: EastBanc, Inc, a District of Columbia corporation, Member

By: _____
Name: _____
Title: _____

Exhibits:

Exhibit A - Legal Description of the Property
Exhibit B - Concept Plans
Exhibit C - Form of Construction and Use Covenant
Exhibit D - Form of Development and Completion Guaranty
Exhibit E - First Source Agreement
Exhibit F - CBE Agreement
Exhibit G - Schedule of Performance
Exhibit H - Form of Ground Lease
Exhibit I - [Reserved]
Exhibit J - Initial Community Participation Plan
Exhibit K - Project Funding Plan
Exhibit L - Initial Project Budget
Exhibit M - Fundraising Plan

Exhibit A

Legal Description of the Property

Lots 14, 15, 16 and 17 in Square 285 in the subdivision recorded in Book NK at Page 83 of the Records of the Office of the Surveyor for the District of Columbia, being the same property known for tax and assessment purposes as Lot 0808 in Square 0285.

Exhibit B

Concept Plans

[Attached]

Exhibit C

Form of Construction and Use Covenant

[Attached]

Exhibit D

Form of Development and Completion Guaranty

[Attached]

Exhibit E

First Source Agreement

[Attached]

Exhibit F

CBE Agreement

[Attached]

Exhibit G

Schedule of Performance

[Attached]

Exhibit H

Form of Ground Lease

[Attached]

Exhibit J

Initial Community Development Plan

[Attached]

Exhibit K

Project Funding Plan

[Attached]

Exhibit L

Initial Project Budget

[Attached]

Exhibit M

Fundraising Plan

[Attached]

EXHIBIT C

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (the "**Covenant**") is made as of the _____ day of _____, 201__ ("**Effective Date**"), between (i) 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 (i) DevICE LLC, a District of Columbia limited liability company, and its successors and assigns (the "**Developer**").

RECITALS

R-1. District owns the improved real property located at 925 13th Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 808 in Square 0285, as further described on Exhibit A (the "**Property**").

R-2. District and Developer entered into a Land Disposition Agreement (by Ground Lease), effective _____, 201_ (the "**Agreement**"), pursuant to which District agreed to ground lease the Property to District and Developer agreed to set forth their agreements regarding the development of the property as more particularly set forth in this Covenant.

R-3. Upon execution and delivery of this Covenant by District and Developer at the Closing set forth in the Agreement the parties shall record this Covenant in the Land Records of the District of Columbia as an encumbrance on the Property.

R-4. Contemporaneously with the execution and delivery of this Covenant District and Developer have executed and delivered the ground lease (the "**Ground Lease**") described in the Agreement, and Developer holds a leasehold estate in the Property pursuant to the terms of the Ground Lease (it being understood hereunder that references to the Property and Developer's obligations involving the Property shall be deemed to refer to Developer's leasehold estate in the Property).

R-5. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents.

R-6. As required by the Agreement, Developer, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the parties, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto agree that the Property must be held, sold and conveyed, subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS AND MISCELLANEOUS PROVISIONS

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

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

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

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

"Approved Plans and Specifications" are the Developer's Construction Drawings for the Project that were approved by District pursuant to the terms of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

"Architect" means Shinberg/Levinas Architectural Design, Inc., or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and reasonably approved by District.

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

"CBE Agreement" is that agreement between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

"Certificate of Completion" means that certificate provided by Developer to the District in connection with Completion of Construction, as required under Section 2.3.3 herein.

"**Certificate of Final Completion**" is defined in Section 2.3.4.

"Certificate of Occupancy" means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Project.

"Commencement of Construction" means Developer has: (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for renovations to commence, and (iv) obtained the Permits and commenced renovation of the Property pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term **"Commencement of Construction"** does not mean (x) site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions, or (y) any cleaning or minor repair or demolition (approved by District) performed by Developer to prepare the Property for tours or use for fundraising events or other related activities including but not limited to showing the Property to prospective donors to ICE-DC, IDEARTS and/or Developer.

"Completion of Construction" means (i) Developer has substantially completed construction of the Project, exclusive only of Punch List Items, in accordance with the Approved Plans and Specifications and this Covenant; (ii) Developer's general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items; (iii) Developer has provided District with a copy of the Certificate of Completion; and (iv) a permanent Certificate of Occupancy has been issued for the Project.

"Construction Consultant" is defined in Section 2.1.2.

"Construction Covenants" shall mean those covenants contained in Article II.

"Construction Drawings" shall mean the drawings, plans, and specifications for the Improvements submitted by Developer to District in accordance with the terms of the Agreement.

"Contaminant Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

"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.

"Debt Financing" shall mean the financing to be obtained by Developer from an Institutional Lender to fund all or, at Developer's election, part of the costs set forth in the Final Project Budget (including, without limitation, costs of issuance relating to any bond financings

issued by the District of Columbia or other governmental agency), and shall expressly exclude the Equity Investment.

"Development and Completion Guaranty" is that certain Development and Completion Guaranty and executed by the Guarantor(s), which binds the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Covenant.

"Development Plan" means Developer's detailed plans for developing, constructing, financing, using, and operating the Project, pursuant to the Permitted Uses (as such term is defined in the Ground Lease). Specifically, Developer plans to redevelop the Property for the following uses: (i) approximately 21,572 square feet of the Property shall be used as galleries for showcasing contemporary art in rotating exhibitions open to the public as well as for contemporary music and/or dance performances, poetry and other readings of literature, and for educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors, (ii) approximately 5,826 square feet of the Property shall be used as a restaurant; and (iii) approximately 5,625 square feet of the Property shall be used as a bookstore and a café.

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

"**Developer's Agents**" means the Developer's employees, consultants, contractors, subcontractors and representatives.

"**Disapproval Notice**" is defined in Section 2.4.2.

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

"**DOL**" is the United States Department of Labor.

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

"**Environmental Claims**" is defined in Section 3.3.1.

"Environmental Laws" means any present or future federal or District law, statute, common law, rule, order, regulation, permit or other requirement or guideline having the force and effect of law of a federal or District governmental authority and relating to (a) the protection of human health, safety, and the 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) the release of a Hazardous Material into, onto, or about the air, land, surface water, or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 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 (also known as the Clean Water Act), 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, the Clean Air Act, 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, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding provided by any Person or Members with a direct or indirect ownership interest in Developer that is required for the development and construction of the Project exclusive of any Debt Financing.

"**Event of Default**" is defined in Section 5.1.1.

"Final Completion" means following Completion of Construction (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (iv) the receipt by District of a certification by Developer of the items in clauses (i) through (iii) of this definition.

"**Final Project Budget**" means Developer's budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, which was approved by District prior to the Effective Date. The Final Project Budget is attached hereto as Exhibit C.

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

"Force Majeure" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Developer or its Members; (ii) is not due to the fault or negligence of Developer or its Members; (iii) is not reasonably foreseeable and avoidable by the Developer or its Members or District in the event such claim is based on a Force Majeure event, and (iv) directly and actually results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of

funds or financial condition of the Developer and (B) changes in market conditions such that construction of the Project as contemplated by the Agreement, this Covenant and the Approved Plans and Specifications is no longer practicable under the circumstances.

"Guarantor" shall mean EastBanc, Inc. and any successor(s) approved by District pursuant to Section 2.10.1

"Guarantor Submissions" shall mean the (a) audited, if available, or (b) if audited are not available, reviewed financial statements and balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information certified by an officer or manager of such guarantor, as District may reasonably request, of a proposed guarantor for the two (2) years prior to submission, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct, and complete).

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

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

"Improvements" mean landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"Indemnified Parties" is defined in Section 3.3.1.

"Institutional Lender" means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds;

(v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) the District of Columbia or such other governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate, or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

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

"Material Change" means (i) any change in size or design from the Approved Plans and Specifications substantially affecting the general appearance or structural integrity, interior or exterior walls and elevations; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications; (iii) any change in the use and operation of the Project from those shown and specified in the Approved Plans and Specifications and Ground Lease; and (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications.

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

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

"**Mortgagee**" means the holder of a Mortgage securing Debt Financing.

"Municipal Delay" shall mean a delay by the District of Columbia, acting by and through an agency subordinate to the Mayor in its regulatory capacity, in issuing a Permit. For purposes of this Agreement, a Municipal Delay shall have occurred only if the time period between Developer's submission to the appropriate agency and the approval of the applicable Permit is longer than the response time required under Applicable Law or if there is no express response time required under Applicable Law, then the typical response time for a similarly situated Permit request.

"**OAG**" is the Office of the Attorney General for the District of Columbia.

"**Payment Bond**" is a bond that meets the requirements of Section 2.10.2, which was delivered to the District on or before the Effective Date.

"**Performance Bond**" is a bond that meets the requirements of Section 2.10.2, which was delivered to the District on or before the Effective Date.

"**Permits**" means all site, building, construction, environmental, remediation and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without

limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete the remediation, construction, operation, and maintenance of the Project in accordance with the Development Plan, the Agreement and this Covenant.

"**Permitted Transfer**" means any Transfer permitted under Section 15.01 of the Ground Lease.

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

"**Prohibited Person**" shall mean any of the following Persons: (a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; 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**" shall have the meaning set forth in Section 3.1.1.

"**Project**" means those Improvements on the Property, and the development, renovation and construction thereof in accordance with the Development Plan, the Agreement and this Covenant.

"**Project Funding Plan**" means the Developer's funding plan that describes the sources and uses of funds for the Project and the methods for obtaining such funds (including the lending sources of all Equity Investment, Debt Financing and costs of issuance necessary to obtain such funds), as approved by District, and any modifications thereto that have been approved by District.

"Property" is defined in the Recitals.

"Punch List Items" mean the minor items of work to be completed or corrected prior to final payment to Developer's general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Approved Plans and Specifications.

"Release" means an instrument, in recordable form, executed by the parties that releases one or more covenants contained herein.

"Schedule of Performance" means that schedule of performance setting forth the timelines for milestones in the remediation of the Property and the design, development, construction, and completion of the Project (including a construction timeline in customary form), attached as Exhibit B hereto.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS [OR FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in ARTICLE XI, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"Transfer" shall have the meaning set forth in Section 15.01 of the Ground Lease.

"**Use Covenants**" means those covenants contained in Article III.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this

construction would operate as an undue hardship on District or Developer or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word "including," and variations thereof, shall mean "including without limitation."

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 FORCE MAJEURE AND MUNICIPAL DELAYS. Neither District nor Developer, as the case may be, shall be considered in default under this Covenant with respect to their respective obligations in the event of forced delay in the performance of such obligations due to Force Majeure, or in the case of Developer, a Municipal Delay. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event or Municipal Delay event, the time or times for performance of the obligations of the party suffering the delay, including "Outside Completion Dates" in the Schedule of Performance directly affected by such delay, shall be extended on a day-for-day basis for the period of the Force Majeure or Municipal Delay event; provided, however that: (a) the party seeking the benefit of this Section 1.11 shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure or Municipal Delay event, the other party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; provided, however, that in the case of Municipal Delay, Developer shall use commercially reasonable efforts to notify the District in advance in writing (the "**Potential Municipal Delay Advance Notice**") at least fifteen (15) Business Days prior to the expiration of the response time required for the applicable Permit under Applicable Law or, if there is no express response time for such response time for such Permit under Applicable Law, then the typical response time for a similarly situated Permit request, provided further that in no event shall a Municipal Delay occur until the date that is the later to occur of sixteen (16) Business Days following District's receipt of the applicable Potential Municipal Delay Advance Notice and the date immediately following expiration of the applicable Permit response time; (b) in the case of a Municipal Delay, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance, as extended if at all, pursuant to the terms of this section, and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the party seeking the delay must take commercially reasonable actions to minimize the delay. If either party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure and Municipal Delays shall not apply to any obligation to pay money.

ARTICLE II

CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT

2.1.1 **Covenant to Develop and Construct**. Developer hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Plans and Specifications, the Schedule of Performance and this Covenant. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act, and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Developer and completed by the Outside Completion Date as indicated in the Schedule of Performance.

2.1.2 **Construction Consultant**. On or before the Commencement of Construction, the Developer shall appoint a construction consultant (the "**Construction Consultant**"), approved by the District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval), who shall, among other matters as specified by the Developer, (a) review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Covenant, (b) report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) review and approve whether the construction of the Project is consistent with the requirements of this Covenant and (d) review and report to the District on the District's issuance of the Final Certificate Completion. The Developer and Architect shall deliver reports from time to time to the Construction Consultant containing the information requested by the Construction Consultant for the purpose of fulfilling its obligations to issue reports pursuant to this Section, and the Construction Consultant shall promptly report any issues or problems to the District and the Developer. The Construction Consultant shall provide such certifications as are provided in the Agreement and this Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount allocated therefor in the Final Project Budget.

2.2 PRE-CONSTRUCTION ITEMS

2.2.1 **Issuance of Permits**. Developer shall have the sole responsibility for obtaining all Permits from the applicable agency within the District of Columbia government or other authority. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer has obtained all Permits necessary to commence and maintain the same, without lapse, to complete the portion of the contemplated work. After approval by District of all Construction Drawings, Developer agrees to diligently pursue obtaining all Permits. From and after the date of any such application until issuance of the Permit, Developer shall report Permit status in writing every thirty (30) days to District. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer.

2.2.2 **Site Preparation**. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for renovation, development and construction in accordance

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

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS

2.3.1 **Commencement of Construction; Schedule of Performance**. Subject to Force Majeure and Municipal Delay, Developer agrees that it shall achieve Commencement of Construction on or before the Outside Completion Date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project thereafter in accordance with the Approved Plans and Specifications and the Schedule of Performance.

2.3.2 **Easements for Public Utilities**. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specifications in connection with the issuance of a Permit.

2.3.3 **Certificate of Completion**. Subject to Force Majeure and Municipal Delay, Developer shall achieve Completion of Construction on or before the Outside Completion Date indicated in the Schedule of Performance. Promptly after Developer achieves Completion of Construction, Developer shall furnish District with a Certificate of Completion, in which the Developer states under oath that (a) the Project has been completed, subject only to Punch List Items, in accordance with all Approved Plans and Specifications and all Applicable Law (accompanied with a certificate from Architect stating the same) and (b) all of the Construction Covenants herein, including the times for Commencement of Construction and Completion of Construction, have been fully satisfied.

2.3.4 **Certificate of Final Completion**. Subject to Force Majeure and Municipal Delay, Developer shall achieve Final Completion on or before the Outside Completion Date indicated in the Schedule of Performance. Promptly after Developer achieves Final Completion, Developer shall notify District and certify, under oath, that all Punch List Items have been completed, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Developer has received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project. Following District's final inspection of the Project pursuant to Section 2.7 hereof, provided District accepts Final Completion of the Project, District shall deliver to Developer a certificate ("**Certificate of Final Completion**") in recordable form confirming Developer's Final Completion of the Project.

2.4 MATERIAL CHANGES TO APPROVED PLANS AND SPECIFICATIONS

2.4.1 **Material Change**. Developer shall not make or cause to be made any Material Changes to the Approved Plans and Specifications without District's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Developer desires to make a Material Change to the Approved Plans and Specifications, Developer shall submit the proposed Material Change to District for approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) Business Days. Failure to respond within five (5) Business Days after a Second Notice shall be considered a deemed approval, provided the Material Change is consistent with the Concept Plans and Development Plan. Any approved or deemed approved Material Change shall become part of the Approved Plans and Specifications.

2.4.2 **Disapproval Notices**. If District issues a notice of disapproval to proposed Material Changes to Approved Plans and Specifications ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Developer shall work together to resolve the issues in a commercially reasonable and prompt manner. Developer shall revise the Material Change to address the objections of District and may resubmit the revised Material Change for approval. In no event shall District condition its approval of the Material Change on grounds which would materially increase the cost of the construction or operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District permits deviation from the Schedule of Performance for purposes of addressing the District's objection), or violates Applicable Laws. Any approved Material Change may not be later disapproved by the District unless any disapproval and revision is mutually agreed upon by the Parties in accordance with the procedures set forth herein. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

2.4.3 **No Representation or Liability**. District's review and approval of any Construction Drawings and Material Change is not and shall not be construed as a representation or other assurance that such Construction Drawings and/or Material Change complies with any building codes, regulations or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and Material Change under this Covenant and shall review such Construction Drawings and Material Change solely for the purpose of protecting its own interests.

2.5 LABOR/EMPLOYMENT COVENANTS.

2.5.1 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

(a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to

be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

(c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

(d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

2.5.2 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Law.

2.6 COMPLIANCE. During the term of this Covenant, Developer agrees to: (i) comply with all Applicable Law; (ii) comply with and maintain the CBE Agreement, and (iii) comply with and maintain the First Source Agreement.

2.7 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of Developer's construction lender and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) **Inspection of Site**. Upon prior written notice to Developer, District shall have the right to enter the Property from time to time and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Developer in a manner that will minimize any interference with construction of

the Project. Developer understands that, provided that District shall minimize any interference with construction of the Project, District or its representatives will enter the Property from time to time upon the required notice set forth above for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

(b) **Progress Reports**. From and after the Effective Date and until issuance of the Certificate of Final Completion, Developer, upon written request by District, shall make written reports to District as to the progress of the construction of the Project, in such form and detail as may reasonably be requested by District, and shall include, among other things, a reasonable number of construction photographs taken since the last report submitted by Developer, detailed statement of adherence to or deviation from the Schedule of Performance and any experienced or anticipated delays or other material construction issues that have arisen since the last report submitted by Developer. Such progress reports shall be delivered to District by the Developer within ten (10) days after request by District, but not more frequently than on a monthly basis.

(c) **Audit Rights**. Upon reasonable prior notice at any time prior to Final Completion, District shall have the right (at the cost of District unless Developer is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books, records, and corporate documents of Developer for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Reform Act of 2010, D.C. Official Code §§ 2-351.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

2.8 MILESTONE NOTICES. Upon completion of each milestone in the Schedule of Performance, Developer shall notify District, and District shall have ten (10) Business Days to inspect the Property and certify to Developer in writing Developer's completion of such milestone.

2.9 PROJECT FUNDING PLAN; FINAL PROJECT BUDGET; DEBT FINANCING.

2.9.1 **Project Funding Plan**. Subsequent to District's approval of the Project Funding Plan, Developer shall not (a) modify the Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Project Funding Plan, or (c) use funds for the Project for any uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval and (ii) any other persons required to approve use of Project funds, if any. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursal or any other element related to the contribution of Project funds for which the District is a source shall not be made without the prior approval of the District in its sole and absolute discretion.

2.9.2 **Final Project Budget**. Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Developer shall be permitted to, without District approval, (a) reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget; (b) reallocate budgeted funds as a result of non-material changes to the Approved Plans and Specifications; and (c) reallocate budgeted funds between hard and soft costs (exclusive of any fees payable to Developer).

2.9.3 **Debt Financing**. From the date hereof until Final Completion, Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval, provided such Debt Financing or Mortgage Loan shall: (i) secure a bona fide indebtedness to an Institutional Lender or such other lender reasonably approved by District, the proceeds of which shall be applied only to the costs identified in the Final Project Budget. Notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage Loan shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to the Developer shall be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage Loan, Developer shall, at least ten (10) Business Days prior to closing on such financing, submit to District such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Developer and the holder of such Debt Financing or Mortgage Loan, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing or Mortgage Loan, certified by Developer to be true and accurate; and

(c) A copy of the proposed deed of trust or such other instrument to be used to secure the Debt Financing or Mortgage Loan.

The terms of this Section 2.9.3 shall terminate as of Final Completion.

2.9.4 **Mortgage Agreement**. Any Mortgagee may request that District enter into an agreement with such Mortgagee or holder providing such Mortgagee or holder with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee or holder, and consent for such request shall not be unreasonable withheld, conditioned or delayed by District provided that (i) there exists no Event of Default by Developer at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in the Agreement, this Covenant, the Development and Completion Guaranty, or any other agreements related to this transaction and (iii) the terms of any requested agreement do not obligate the District to make any payments or take any action in violation of Applicable Law.

2.10 DISTRICT SECURITY FOR PERFORMANCE

2.10.1 **Development and Completion Guaranty**.

(a) On or before the Effective Date, Developer has delivered the Development and Completion Guaranty to District to secure Developer's performance of the provisions of this Covenant. In the event Developer fails to perform any of its obligations contained in this Covenant, the District may require the Guarantor, in accordance with the terms of the Development and Completion Guaranty, to perform Developer's obligations.

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Such replacement Guarantor(s) shall execute and deliver to District a Development and Completion Guaranty in the same form as originally delivered to District.

2.10.2 **Payment and Performance Bonds**. On or before the Effective Date, Developer has obtained, or has caused its general contractor for the Project to obtain, a Payment Bond and Performance Bond in form and substance acceptable to the District, naming the District as a named obligee. The Payment Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials indicated in the Final Project Budget. The Performance Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials indicated in the Final Project Budget and shall ensure completion of the Project in accordance with the Approved Plans and Specifications. The Payment Bond and Performance Bond shall be maintained for the duration of the term of the Construction Covenants identified in Section 4.1.

ARTICLE III
USE COVENANTS

3.1 PROHIBITED USES. The Property shall be used only for those uses permitted by the Ground Lease and for no other use.

3.2 NONDISCRIMINATION COVENANTS

3.2.1 **Covenant not to Discriminate in Sales or Rentals**. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the Project.

3.2.2 **Covenant not to Discriminate in Employment**. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the construction and operation of the Project.

3.2.3 **Affirmative Action**. Developer will take affirmative action to ensure that employees are treated in accordance with Applicable Law during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap as and to the extent provided by Applicable Law. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this non-discrimination clause.

3.2.4 **Solicitations for Employment**. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

3.2.5 **Enforcement**. In the event of Developer's non-compliance with the nondiscrimination covenants of this Section 3.2 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

3.3.1 **Compliance with Environmental Laws; Indemnity**. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto, except as provided below. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material by Developer or Developer's Agents after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property caused by Developer or Developer's Agents subsequent to the Effective Date ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

3.3.2 **Release**. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

ARTICLE IV
TERM; RELEASE; SUBORDINATION OF LIENS AND MORTGAGES

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District delivers to Developer the

Certificate of Final Completion, at which time the Construction Covenants shall be deemed to be released and of no further force and effect. At such time, upon Developer's request to the District, Developer shall prepare and be entitled to, and District shall execute, a Release of such Construction Covenants to be recorded among the Land Records against the Property.

4.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All obligations, liabilities, terms, and conditions set forth herein (other than the Construction Covenants) including, without limitation, Sections 3.1, 3.2, 3.3, 5.1, 5.2, 6.1, 6.2, 7.2, and Articles VIII and XII hereof, shall run with the land, binding Developer and its successors and assigns in perpetuity, unless otherwise provided herein or otherwise agreed to by the District in writing.

4.3 RELEASE. At the request of either party to this Covenant and provided that there is no dispute that the term has expired, the parties shall execute a Release. In such event, the requesting party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting party. The non-requesting party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting party shall promptly deliver an original executed Release to the requesting party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

4.4 SUBORDINATION OF LIENS AND MORTGAGES. All Mortgages and other liens affecting all or any portion of the Property shall be subordinate to this Covenant so long as this Covenant remains in effect, it being expressly acknowledged and agreed by the District that this Covenant is not intended to encumber or otherwise affect the Adjacent Property.

ARTICLE V
DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT.

5.1.1 Each of the following shall constitute an "**Event of Default**" on the part of Developer:

(a) Developer defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;

(b) Developer fails to perform a milestone by the applicable Outside Completion Date set forth in the Schedule of Performance, subject to Force Majeure and Municipal Delay; or

(c) Developer shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

5.1.2 If the District fails to perform any obligation or requirement, or fails to comply with any term or provision, of this Covenant and such failure continues uncured for thirty (30) days after receipt of written notice of such failure from Developer, provided that, if the default is of a type or character that cannot be cured within a thirty (30) day period but is capable of being cured by the District using its reasonable efforts, the District shall have such additional time as may be necessary in order to effect such cure, as long as the District commences the cure within such thirty (30) day period and the District continues to use reasonable efforts to cure the default.

5.2 REMEDIES.

5.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies to the extent provided below, all of which are cumulative:

(a) District may cure Developer's Event of Default, at the reasonable cost and expense of Developer, after ten (10) Business Days' notice to Developer. Developer shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Developer within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid;

(b) District may pursue specific performance of Developer's obligations hereunder;

(c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;

(d) District may require from the Guarantor the full and complete performance of any and all of Developer's agreements, obligations, and covenants contained in Article II, Section 3.3 and Article VIII of this Covenant; and

(e) District may require performance under the Performance Bond or Payment Bond.

5.2.2 In the event of a default by the District hereunder that is not cured prior to the expiration of the applicable cure period, Developer may pursue remedies available in equity including specific performance. In no event shall District be liable for any monetary damages, including compensatory, consequential, punitive or special damages hereunder.

ARTICLE VI
INSURANCE OBLIGATIONS

6.1 INSURANCE COVERAGE. During the periods identified below, Developer shall carry and maintain in full force and effect the following insurance policies:

(a) Property Insurance - After achieving Completion of Construction, Developer shall maintain or ensure maintenance of property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance.

(b) Builder's Risk Insurance - During construction of the Project, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors.

(c) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Developer shall maintain or shall cause its general contractor to maintain automobile liability insurance and commercial general liability insurance policies written to each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars ($2,000,000.00) per occurrence, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer or general contractor is required to carry shall not be construed as any limitation on Developer's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its sole discretion.

(d) Workers' Compensation Insurance - At all times after the Effective Date of this Covenant until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain or shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as are required by Applicable Law.

(e) Professional Liability Insurance - During construction of the Project and for a period of not less than five (5) years thereafter, Developer shall cause Architect, and every engineer or other professional who will perform material services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical, and mechanical engineers with a deductible acceptable to District.

(f) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

6.2 GENERAL POLICY REQUIREMENTS. All property and builder's risk insurance shall name District as a named insured. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies of Developer and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

ARTICLE VII
CASUALTY

7.1 PRIOR TO ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the Effective Date but prior to the issuance of the Certificate of Final Completion, Developer shall be obligated to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval). Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Developer present to District, any Certificate of Final Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations; provided, however, that the milestone date for Final Completion of the Project set forth in the Schedule of Performance shall be reasonably and appropriately extended due to such event of Force Majeure.

7.2 AFTER ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, Developer shall promptly cause the Property to be restored to its condition existing

prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within twenty (20) Business Days after a request for approval).

ARTICLE VIII
INDEMNIFICATION

Developer shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly by any acts or omissions of Developer or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE IX
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest or leasehold estate in the Property, but shall be retained by District, or such other designee of District as District may so determine.

ARTICLE X
AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency, and by Developer. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE XI
NOTICES

11.1 NOTICE REQUIREMENTS. Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by reputable private overnight commercial courier service to the parties at the following addresses:

DISTRICT:

Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, N.W., Suite 1010 South
Washington, D.C. 20001
Attn: Deputy Attorney General, Commercial Division

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

DEVELOPER:

DevICE, LLC
c/o EastBanc, Inc.
3307 M Street, NW, Suite 400
Washington, D.C. 20007
Attn: Anthony Lanier

And:

c/o IDEART, LLC
3304 R Street, NW
Washington, DC 20007

With a copy to:

Roberta F. Colton, Esquire
Real Estate Counselors, PLLC
1325 G Street, NW, Suite 500
Washington, DC 20005

11.2 DEEMED RECEIPT. Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail, return receipt

requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE XII
TRANSFER

12.1 TRANSFER PRIOR TO CERTIFICATE OF FINAL COMPLETION. Developer represents, warrants, covenants and agrees, for itself and its successors and assigns, that, prior to District's issuance of a Certificate of Final Completion, notwithstanding any term of the Ground Lease, Developer shall not make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Developer shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request.

12.2 TRANSFER AFTER CERTIFICATE OF FINAL COMPLETION. Following issuance by the District of the Certificate of Final Completion, Developer may effect a Transfer pursuant to the terms of the Ground Lease.

12.3 OBLIGATIONS AND LIABILITIES. The obligations and liabilities of an Developer under this Covenant shall apply only with respect to the period that such Developer owns a leasehold estate to the Property. Upon assignment by such Developer of its leasehold interest to the Property (other than to a lender as security for a loan), such Developer shall be relieved of all obligations and liabilities under this Covenant arising after the date of the assignment, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the assignment, the successor, transferee or assignee in ownership or interest of any such Developer shall automatically become "Developer" hereunder and liable for all obligations arising after the date of the conveyance.

12.4 ESTOPPEL. In the event of a transfer prior to Final Completion, District shall provide to Developer, within ten (10) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default by Developer exists under this Covenant.

12.5 NO UNREASONABLE RESTRAINT. Developer hereby acknowledges and agrees that the restrictions on Transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to Transfer or otherwise alienate the Property. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have caused this Covenant to be executed, acknowledged and delivered for the purposes therein contained.

DISTRICT:

DISTRICT OF COLUMBIA,
acting by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name: _____
Title: Deputy Mayor for Planning and Economic Development

Approved for Legal Sufficiency:

Office of the Attorney General of the District Of Columbia

By:_____
Assistant Attorney General

Date: _____

DEVELOPER:

DevICE, LLC, a District of Columbia limited liability company

By: IDEARTS, LLC, a District of Columbia limited liability company, Member

By:_____
Name:_____
Title: _____

By: EastBanc, Inc, a District of Columbia corporation, Member

By:_____
Name:_____
Title:_____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 201_ by_____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

_____
Notary Public

[Notarial Seal]

My commission expires:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 201_, by Daniel Levinas, the Managing Member of IDEARTS, LLC, a Member of Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

_____
Notary Public

[Notarial Seal]

My commission expires: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 201_, by Anthony Lanier, the President of EastBanc, Inc., a Member of the Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

_____
Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBIT A

Legal Description

[See attached]

EXHIBIT B

Schedule of Performance

EXHIBIT C

Final Project Budget

Exhibit D

DEVELOPMENT AND COMPLETION GUARANTY

This DEVELOPMENT AND COMPLETION GUARANTY (this "**Guaranty**") is made as of _____, 201_ ("**Effective Date**"), by EastBanc, Inc. a District of Columbia corporation ("**Guarantor**") In favor of the DISTRICT OF COLUMBIA, a municipal corporation (the "**District**").

RECITALS

A. DevICE, LLC ("**Developer**") and District have entered into a Land Disposition Agreement (by Ground Lease) dated as of _____, 201_ (the "**LDA**"), concerning the sale by District to Developer of 925 13th Street, NW, in Washington, D.C., known for tax and assessment purposes as Lot 0808 in Square 0285, more commonly known as The Franklin School (the "**Property**").

B. Pursuant to the terms of the LDA, Guarantor is required to guaranty development and construction of the Project (as defined in the LDA) in the manner and within the timeframes pursuant to the terms of the LDA and Article II of the Construction and Use Covenant. The LDA further provides that on or before the Closing Date, and as a condition precedent to the Closing, Developer shall deliver this Guaranty, fully executed by Guarantor, to District.

C. To induce District to enter into the LDA, Guarantor has agreed to guaranty development, construction and completion of the Project in accordance with Article II of the Construction and Use Covenant and the LDA.

NOW, THEREFORE, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Incorporation of Recitals; Definitions. The foregoing Recitals are incorporated in this Guaranty and made a part hereof by this reference to the same extent as if set forth herein in full. Defined terms used herein and not otherwise defined shall have the meanings given them in the LDA.

2. Representations and Warranties.

2.1 Solely with respect to itself, Guarantor warrants and represents to District as follows:

(a) the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it is bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it is bound;

(b) Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the LDA, this Guaranty, the Construction and Use Covenant, the Schedule of Performance, the Approved Plans and Specifications, and the documents referenced in each of the foregoing;

(c) Guarantor (if Guarantor is not a natural Person) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business, and is in good standing, in the District of Columbia;

(d) Guarantor, if Guarantor is not a natural Person, has been duly authorized to carry on its business, and to hold title to and own the property it owns, to execute, deliver and perform this Guaranty, and to consummate the transactions contemplated hereby and thereby;

(e) this Guaranty has been duly authorized, executed and delivered by Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights from time to time in effect;

(f) no actions, suits, or proceedings are pending or, to Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change (in comparison to any state of affairs existing before or after the date of this Guaranty) to (i) the business operations, assets or condition (financial or otherwise) of Guarantor, or (ii) the ability of Guarantor to perform, or of District to enforce, any material provision of this Guaranty (a "**Material Adverse Change**");

(g) no consent, approval or authorization of, or registration, declaration, or filing with, any governmental authority or any other Person is required that has not been obtained in writing by Guarantor, in connection with the execution, delivery and performance by Guarantor of this Guaranty and the transactions contemplated by this Guaranty;

(h) Guarantor is not insolvent (as such term is defined or determined for purposes of Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) as now or hereafter amended or recodified or any other bankruptcy law (collectively, the "Bankruptcy Code"), and the execution and delivery of this Guaranty will not make Guarantor insolvent;

(i) to Guarantor's knowledge, neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of Guarantor contains any untrue statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

(j) to Guarantor's knowledge, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein;

(k) Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments and governmental charges levied upon it or any of its assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

(l) there has been no Material Adverse Change to Guarantor;

(m) there are no conditions precedent to the effectiveness of this Guaranty;

(n) Guarantor is not a Prohibited Person; and

(o) all financial statements delivered to District at any time by or on behalf of Guarantor (i) are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied, and there has been no Material Adverse Change in the financial position of Guarantor since the respective dates of (or periods covered by) such statements. Without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually (and solely managed) by Guarantor and not jointly with any spouse or other Person.

2.2 All of the representations and warranties in this Guaranty are true as of the Closing Date and will continue to be true throughout the term of this Guaranty as if remade at all times afterwards and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within ten (10) Business Days upon its discovering any breach of such representations or warranties.

2.3 Guarantor acknowledges that District is consummating the Closing in reliance upon the representations, warranties and agreements contained in this Guaranty. District shall be entitled to such reliance notwithstanding any investigation which has been made, has not been made or may be conducted by District or on District's behalf.

3. Guaranteed Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally, and jointly and severally, guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants contained in Article II, Section 3.3, and Article VIII of the Construction and Use Covenant. Further, except to the extent of District's gross negligence or willful misconduct, Guarantor absolutely, irrevocably, and unconditionally, and jointly and severally, agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations contained in Article II, Section 3.3, and Article VIII of the Construction and Use Covenant and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees of any outside counsel engaged by

District to enforce this Guaranty). Upon the occurrence of any failure of Developer to fully and timely perform its agreements, covenants, and obligations contained in Article II, Section 3.3 and Article VIII of the Construction and Use Covenant, following the expiration of any applicable notice and cure period, upon request by District, Guarantor shall, at Guarantor's sole cost and expense, cure such default by or failure of Developer. The obligations of Guarantor set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

4. Liens. If any mechanic's or materialman's liens should be filed, or should attach, with respect to the Property or the Improvements by reason of the construction of the Project, within thirty (30) days after Guarantor is advised of the filing of such liens, Guarantor shall take action to cause the removal or waiver of such liens, including, if necessary, the posting of security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District or any delay in Final Completion.

5. No Right of Subrogation. Guarantor hereby acknowledges that, until the obligations to develop, construct and complete the Project under the LDA and Article II of the Construction and Use Covenant are satisfied in full it will not be entitled to reimbursement or distribution from Developer or another guarantor on account of any sums paid by it pursuant to this Guaranty. Guarantor hereby acknowledges and agrees that Guarantor shall not have any right of subrogation by reason of payments or performance in compliance with the terms of this Guaranty, any such right being hereby expressly waived and relinquished. For so long as the Guaranteed Obligations remain unperformed, Guarantor waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Developer or another guarantor arising from a payment made by Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Developer or Guarantor for reimbursement. It is expressly understood that the waivers and agreements of Guarantor set forth above constitutes additional and cumulative benefits given to District for its security and as an inducement for it to enter into the LDA with Developer.

6. Financial Statements. Within fifteen (15) days after the Effective Date of this Guaranty, and within thirty (30) days after Guarantor's receipt of a request from District which request may be made from time-to-time (but not more than one time per calendar year) until Final Completion of the Project, Guarantor shall deliver to District copies of updated, unaudited financial statements (certified by Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statement, other financial reports, and other financial information of Guarantor as District may reasonably request.

7. No Discharge of Obligations.

7.1 Except in the event of a written amendment to this Guaranty signed by the Guarantor and District and then only to the extent expressly provided therein, to the fullest extent

permitted by law, none of Guarantor's obligations and no right against Guarantor shall be in any way discharged, impaired or otherwise affected by:

(a) The modification, amendment, or waiver, by change order, directive, or otherwise, or any extension of time for performance of, or other modification in or of the LDA or Construction and Use Covenant.

(b) The release or waiver of or delay in the enforcement of any right or remedy by District against Developer or any Guarantor under the LDA, Construction and Use Covenant, or this Guaranty, or the compromise or settlement by any of the above parties of any amount or matter in dispute relating to any of the forgoing agreements.

(c) The exercise by District, any mortgage lender, or any other party of any of their respective rights and remedies under the LDA, Construction and Use Covenant, or any mortgage loan documents, or any other agreement relating to the construction of the Improvements.

(d) The approval, disapproval, inspection, review, or failure to inspect or review by District of the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto, in connection with the construction of the Improvements.

(e) The release or discharge of Developer, any Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding.

(f) Any act or omission, whether negligent or otherwise, of District or its agents, employees, consultants, or any other Person acting for the benefit of District.

7.2 It is expressly agreed by Guarantor that, to the fullest extent permitted by law, none of the forgoing events shall release or discharge the obligations of Guarantor hereunder, whether or not such event may otherwise be deemed a legal or equitable discharge of a guarantor or surety. Guarantor agrees that neither District nor any other party shall have any duty to disclose to Guarantor any information they receive regarding the financial status of any party involved in the development or construction of the Improvements, or any information relating to the Property, whether such information indicates that the risk or obligations of Guarantor have or may increase. Guarantor assumes full responsibility for keeping informed of such matters.

7.3 No change in the composition of District, Developer or any other Person shall in any way affect, impair, or diminish the liability of Guarantor hereunder, and District shall have no obligation to inquire into the powers of any of them to perform the Guaranteed Obligations.

7.4 This Guaranty is being delivered free of any conditions and no representations have been made to Guarantor affecting or limiting the liability of Guarantor hereunder. The obligations of Guarantor hereunder are independent of any obligations which Guarantor may have to District, directly or indirectly.

8. Nature of Guaranty. This Guaranty is absolute, irrevocable, and continuing in nature and relates to Guaranteed Obligations now existing or hereafter arising. This Guaranty is

a guaranty of prompt and punctual performance and is not a guaranty of collection. The liability of Guarantor hereunder is independent of the obligations of Developer or any other Person, and a separate action or separate actions may be brought or prosecuted against the Guarantor whether or not any action is brought or prosecuted against Developer, another guarantor, or any other Person, or whether Developer, the another guarantor, or any other Person is joined in any such action or actions. The liability of Guarantor hereunder is independent of, and not in consideration of or contingent upon the liability of any other Person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor unless Guarantor is independently and specifically released in writing by District. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance (and not of collection) without regard to:

(a) the legality, validity, or enforceability of any of the LDA, Construction and Use Covenant, or any of the obligations of Developer evidenced thereby;

(b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by Guarantor under this Guaranty); or

(c) any other circumstances whatsoever (with or without notice to or knowledge of Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

9. Relationship to Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument, or agreement executed by Guarantor in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto. In no event will Guarantor's liability hereunder be reduced as a result of any evidence that the cost to perform the Guaranteed Obligations exceeds the enhancement in value to the Property resulting from performance of the Guaranteed Obligations.

10. Subordination of Indebtedness and Obligations. Guarantor agrees that any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) or other obligations or liabilities owed to Guarantor by any other guarantor or Developer shall at all times be subordinate in all respects to the full and prior indefeasible performance of all obligations owed to District under the LDA and Article II of the Construction and Use Covenant. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all such obligations owed to District have been paid and performed in full.

11. Statute of Limitations and Other Laws. To the fullest extent permitted by law, until the Guaranteed Obligations have been irrevocably paid and performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any

of the Guaranteed Obligations may have become barred by any statute of limitations. Guarantor expressly waives, to the fullest extent permitted by law, the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301 (2012 Supp.).

12. Rights Upon Default.

12.1 Upon the occurrence of (a) any failure in the performance of the Guaranteed Obligations beyond any applicable notice and cure period, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts as they mature, (d) an assignment by Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed within ninety (90) days of Guarantor's receipt of notice of filing, (f) the determination by the District in good faith that a Material Adverse Change has occurred in the financial condition of Guarantor, including without limitation, the entry of a significant judgment against Guarantor, the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor, (g) the falsity in any material respect of or any material omission in any representation made to District by Guarantor, or (h) any other default by Guarantor of any other obligations owed to District under the terms hereof, District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for District to marshal assets in favor of Developer, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty.

12.2 Guarantor agrees that, if District determines that a default has occurred hereunder beyond any applicable notice and cure periods, District may (in addition to all of its other rights and remedies) without the consent of or notice to Guarantor (a) complete or engage one or more third parties to complete construction of the Project, (b) terminate any and all contracts and agreements entered into by Guarantor in connection with construction of the Project, (c) engage builders, contractors, engineers, architects, and others for the purpose of furnishing labor, materials, and equipment in connection with the construction of the Project, (d) pay, compromise, or settle all bills or claims incurred in connection with Final Completion, (e) take such actions including procuring another developer or developers of the Project, or (f) take or refrain from taking such other action to enforce the provisions of this Guaranty as it may from time to time determine in its sole discretion. Guarantor shall, immediately upon demand therefor, reimburse District for any and all reasonable expenditures incurred by District under this Section plus interest thereon at a rate of fifteen percent (15%) per annum from the date that is thirty (30) days after demand for payment accompanied by reasonable backup documentation until all sums are paid to District. Upon the occurrence of any of (a) through (e) in the first sentence of subsection 12.1, District may file a separate action or actions against one or more

Guarantors, whether action is brought or prosecuted with respect to any security or against any other Person, or whether any other Person is joined in any such action or actions.

12.3 Guarantor agrees that District and Developer may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer of any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer or the other Person or any Person, shall have any personal liability with respect thereto.

12.4 Guarantor expressly waives, to the fullest extent permitted by law, any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Developer or any other Person with respect to the Guaranteed Obligations (other than full performance of the Guaranteed Obligations to the satisfaction of District); (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations; (c) the cessation for any cause whatsoever of the liability, in whole or in part, of Developer or any other Person (other than by reason of the timely and full performance of all Guaranteed Obligations); (d) any failure of District to marshal assets in favor of Developer or any other Person; (e) any failure of District to give notice of sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral; (f) any failure of District to comply with applicable Laws or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District, including any failure of District to conduct a commercially reasonable sale or other disposition of any collateral or other security for any obligation owed to District; (g) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations); (h) any applicable Law or other requirement which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal; (i) any failure of District to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (j) the election by District in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person; (l) the

avoidance of any lien in favor of District for any reason; (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, or dissolution proceeding commenced by or against any Person, including any discharge of, or bar, or stay against enforcing all or any of the Guaranteed Obligations (or any interest thereon) in or as a result of any such proceedings; (n) all rights or defenses Guarantor may have by reason of protection afforded to the principal with respect to the Guaranteed Obligations or to any other guarantor's obligations under its guaranty, in either case, pursuant to the anti-deficiency laws or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and (o) the right to require District to proceed under any other remedy District may have before proceeding against Guarantor. Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional obligations by Developer for which Guarantor shall be automatically responsible and liable hereunder and waives all surety and guarantor defenses, all to the fullest extent permitted by law, and thus, Guarantor acknowledges that it may essentially have no control over its ultimate responsibility for Developer's obligations guaranteed hereunder.

13. Cumulative Rights. The exercise by District of any right or remedy hereunder or under the LDA, Construction and Use Covenant, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the LDA, Construction and Use Covenant, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances.

14. Waivers and Consents.

14.1 Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing

effectiveness hereof: (a) supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for performance or the terms of the LDA or Construction and Use Covenant; (b) supplement, modify, amend, or waive, or enter into or give any agreement, approval, or consent with respect to, the LDA, Construction and Use Covenant, or any part thereof, or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder; (c) accept new or additional instruments, documents, or agreements in exchange for or relative to the LDA, Construction and Use Covenant, or any part thereof or performance pursuant thereto; (d) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (e) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (f) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (g) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (h) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (i) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (j) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

14.2 Guarantor expressly agrees that until the Guaranteed Obligations are performed in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not, to the fullest extent permitted by law, be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay, or other act or omission of District, or District's failure to proceed promptly or otherwise as against Developer or any other Person, or any security;

(c) Any action, omission, or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Developer or any other Person; or

(d) Any dealings occurring at any time between Developer or any other Person, on the one hand, and District, on the other hand, whether relating to the LDA, Construction and Use Covenant, or otherwise.

(e) Guarantor waives all rights and defenses arising out of an election of remedies by District, even though that election of remedies may have destroyed Guarantor's rights of subrogation and reimbursement against Developer or any other Person, and even though that election of remedies by District has destroyed Guarantor's rights of contribution against another guarantor of any of the Guaranteed Obligations.

14.3 No provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in Sections 12 and 14.

14.4 Guarantor hereby expressly, to the fullest extent permitted by law, waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers, or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances.

15. No Amendment. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by District and the Guarantor to be bound by such agreement.

16. Successors. This Guaranty shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors and assigns of the parties hereto.

17. Irrevocable Survival. This Guaranty shall be irrevocable by Guarantor until all Guaranteed Obligations have been completely and indefeasibly paid and all obligations and undertakings of Developer and of the undersigned hereunder have been completely performed.

18. Unenforceability. If any term or provision of this Guaranty shall be determined to be illegal, invalid, or unenforceable, this Guaranty and all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

19. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the Construction and Use Covenant.

20. Entire Agreement. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, commitments, representations, agreements, and understandings between the parties.

21. WAIVER OF JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY, THE LDA, CONSTRUCTION AND USE COVENANT, OR TO THE TRANSACTIONS CONTEMPLATED BY THE AFOREMENTIONED. ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA OR THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, AND GUARANTOR AGREES THAT SUCH COURTS ARE THE MOST CONVENIENT FORUM FOR RESOLUTION OF

ANY SUCH ACTION AND FURTHER AGREES TO SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY RIGHT TO OBJECT TO VENUE IN SUCH COURTS.

_____	_____
INITIAL HERE	INITIAL HERE
_____	_____
INITIAL HERE	INITIAL HERE

22. Notice. Any notice which may or is required to be given hereunder shall be deemed given three days after being deposited, registered or certified, return receipt requested, in the United States mail, addressed to the recipient at the address set forth after recipient's name below, or at such different addresses as it shall have theretofore given written notice of hereunder:

GUARANTOR:	EastBanc, Inc.
with a copy to:	_____
DISTRICT:	Office of the Deputy Mayor for Planning and Economic Development 1350 Pennsylvania Ave., N.W., Suite 317 Washington, DC 20001 Attention: Deputy Mayor for Planning and Economic Development
with a copy to:	Office of the Attorney General for the District of Columbia 441 4th Street, NW, Suite 1010 South Washington, DC 20001 Attention: Deputy of Commercial Division

23. Counterparts. This Guaranty may be executed in counterparts, each of which shall be deemed to be an original. In proving this Guaranty it shall not be necessary to produce or account for more than one counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF Guarantor has executed this Guaranty as of the day and year first above written.

EASTBANC, INC.

By:_____
Name:_____
Title:_____

GROUND LEASE AGREEMENT

BETWEEN

THE DISTRICT OF COLUMBIA,

AS LANDLORD,

AND

DEVICE, LLC,

AS TENANT

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GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "**Lease**") is made this _____ day of _____, 20__, by and between the **DISTRICT OF COLUMBIA**, a municipal corporation ("**Landlord**") acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**") and **DevICE, LLC**, a District of Columbia limited liability company ("**Tenant**"). Landlord and Tenant are each referred to hereinafter as a "**Party**" and may be collectively referred to as "**Parties**".

IN CONSIDERATION of the payments of rents and other charges provided for herein and the covenants and conditions hereinafter set forth, Landlord and Tenant hereby covenant and agree as follows:

ARTICLE I.

REFERENCE PROVISIONS, DEFINITIONS AND EXHIBITS

As used in the Lease, the following terms shall have the meanings set forth in Sections 1.01 and 1.02 below.

Section 1.01 Reference Provisions.

A. **Leased Premises or Premises**: That certain real property located at 925 13th Street, NW, Washington, DC, commonly known as the "**Franklin School**", and as legally described in **Exhibit "A"** hereof, together with all buildings and improvements now or hereafter erected, constructed or placed thereon, including an existing school building containing approximately 51,000 square feet of floor area (the "**Building**"). The Leased Premises (an approximate depiction of which is shown **Exhibit "B"**), for purposes of this Lease shall be deemed to include the Building, the underlying land and all improvements situated thereon.

B. **Term**: Fifty (50) Lease Years beginning on the Rent Commencement Date.

C. **Lease Commencement Date**: The date of the full execution and delivery of this Lease.

D. **Rent Commencement Date**: The date on which Substantial Completion of the Tenant's Work occurs.

E. **Termination Date**: The last day of the Term, or any earlier date on which this Lease is terminated in accordance with the provisions hereof.

F. **Substantial Completion**: The occurrence of: (i) the issuance by applicable Governmental Authorities of a final Certificate of Occupancy and other necessary approvals for the use and occupancy by Tenant of the of the Leased Premises, and (b) the execution by the architect retained by Tenant and approved by Landlord to prepare the design drawings for the Tenant's Work of an AIA Form G704 evidencing substantial completion (subject only to Punch List Items that do not interfere with the use and occupancy of the Leased Premises for its intended

purposes) and stating that, in its professional opinion based on its inspections, the Tenant's Work has been constructed in compliance in all material respects with: (i) the Approved Construction Drawings (as such term is defined in the Construction and Use Covenant), (ii) all applicable governmental requirements, and (iii) all covenants, conditions, restrictions, easements, or other matters of record with respect to the title to the Leased Premises in effect from time to time, including the Construction and Use Covenant.

G. **Annual Base Rent**: The Annual Base Rent for the Leased Premises for the first Lease Year and each Lease Year thereafter shall be One and 00/100 Dollar ($1.00). It is the express understanding and agreement of Landlord and Tenant that the Rent due and payable hereunder shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the Annual Base Rent described below, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises shall be paid by Tenant (including, but not limited to, real estate and possessory taxes assessed against the Leased Premises, water and sewer use fees, insurance premiums, utility expenses, and any and all operating, maintenance and repair costs of the Leased Premises and all improvements situated thereon).

H. **Permitted Uses**: The Leased Premises shall be used solely for the following uses: (i) the design, renovation, and construction of Tenant's Work and for future alterations to the Leased Premises, consistent with the Permitted Uses (hereinafter defined), pursuant to terms set forth in this Lease; (ii) galleries for showcasing contemporary art in rotating exhibits open to the public; (iii) contemporary music and dance performances; (iv) poetry and other readings of literature; (v) educational programs including art education, internships, artist interactions, seminars and other artistic educational endeavors; (vi) library and reading room (the uses described in clauses (i) through (vi) above, and clauses (ix) and (x) below, shall contain approximately 21,572 square feet); (vii) a restaurant containing approximately 5,826 square feet; (viii) a café containing approximately 4,511 square feet, (ix) a bookstore [**NB: SQUARE FOOTAGES FOR (viii) CAFÉ AND (ix) BOOKSTORE SUBJECT TO REVISION WHEN FINAL DEVELOPMENT PROGRAM IS FINALIZED**]; (x) office space for the administration of the Permitted Uses, and/or (xi) any other purpose in the event of any permitted assignment of this Lease or sublease of the Leased Premises under the terms set forth in this Lease (the uses set forth in clauses (ii) through (vi) above are referred to as the "**Primary Permitted Uses**") and the uses set forth in clauses (vii) through (x) above are referred to as the "**Ancillary Permitted Uses**"). The Primary Permitted Uses and the Ancillary Permitted Uses, together with the uses set forth in clauses (i) and (xi) above, are referred to collectively as the "**Permitted Uses**". The Leased Premises shall be used primarily for the Primary Permitted Uses.

I. **Rent Payments**: The Rent payments due herein shall be made payable to Landlord at: DC Government, Lease Receipts, P.O. Box 96853, Washington, DC 20009.

J. **Addresses**:

FOR THE LANDLORD:

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

	Economic Development and **District of Columbia Department of General Services** 2000 14th Street, NW 8th Floor Washington, DC 20009 Attention: Director
With a copy to:	**District of Columbia Department of General Services** 2000 14th Street, NW 8th Floor Washington, DC 20009 Attention: General Counsel
In the case of a default by Landlord , with a copy to:	**Office of the Attorney General for the District of Columbia** 441 4th Street NW, Suite 1010S Washington, D.C. 20001 Attention: Deputy of Commercial Division
FOR THE TENANT:	**DevICE, LLC** c/o EastBanc, Inc. 3307 M Street, NW, Suite 400 Washington, D.C. 20007 Attn: Anthony Lanier and: **c/o IDEART, LLC** 3304 R Street, NW Washington, DC 20007
With a copy to:	**Roberta F. Colton, Esquire** Real Estate Counselors, PLLC 1325 G Street, NW, Suite 500 Washington, DC 20005

K. **Exhibits**: The addenda and Exhibits listed below are attached to this Lease and are hereby incorporated in and made a part of this Lease. Any conflict or ambiguity between any Exhibit to this Lease and this Lease, shall be resolved in favor of the applicable Exhibit.

Exhibit A	LEGAL DESCRIPTION OF THE LEASED PREMISES
Exhibit B	DEPICTION OF LEASED PREMISES
Exhibit C	TENANT'S WORK

Section 1.02 Definitions.

A. **Additional Rent**: All sums due and payable by Tenant to Landlord under this Lease, other than Annual Base Rent.

B. **Affiliate:** A Person which is controlling, controlled by, or under common control with, Tenant, or another Person, as the case may be. As used herein, "***control***" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise.

C. **BOMA Measurement Standard**: The Building Owners and Managers Association Standard Method for Measuring Floor Area in Office Buildings (BOMA/ANSI Z65.1-2010) for rentable floor area (i.e. Tenant's gross square footage of the entire building floor, minus the elevator core, flues, pipe shafts, vertical ducts, balconies, stairwell areas, and other similar columns and projections).

D. **Business Day**: Monday through Friday, other than (i) holidays recognized by the District of Columbia or the federal government, and (ii) days on which the District of Columbia or federal government closes for business as a result of severe inclement weather or a declared emergency. If any item must be accomplished or delivered under this Lease on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on a day other than a Business Day shall be deemed to have been extended to the next Business Day. The word "day" uncapitalized shall refer to a calendar day.

E. **Completion or Completed**: (i) The completion of specified work by or on behalf of Tenant at the Leased Premises (including Tenant's Work) in substantial conformance with the final plans and specifications and construction drawings therefor approved by Landlord and in accordance with all applicable Laws; (ii) the close-out of all construction contracts for such work; (iii) the payment of all costs of constructing or performing such work, and receipt by Tenant of fully executed and notarized valid releases of liens from the general contractor and all subcontractors furnishing supplies or labor in connection with such work which cost more than Five Thousand Dollars ($5,000.00) ("**Major Subcontractors**"), and (iv) the receipt by Tenant, if applicable, of a permanent or temporary certificate of occupancy for the Leased Premises.

F. **Construction and Use Covenant**: The Construction and Use Covenant entered into by Landlord and Tenant contemporaneously with the execution and delivery of this Lease. The Construction and Use Covenant contains a description of the initial Tenant's Work to be performed at the Leased Premises.

G. **Excused Periods**: Periods during which the failure of Tenant to conduct the operations of its business in the Leased Premises for the Permitted Uses is caused by: (i) alterations or renovations being diligently performed in and to the Leased Premises in accordance with the terms of this Lease; (ii) damage or destruction, eminent domain proceedings or actions, or Force Majeure; or (iii) snow or other weather conditions or other emergencies.

H. **Floor Area**: The actual number of rentable square feet of space contained on all floors within any buildings located on the Leased Premises and measured pursuant to and in accordance with the BOMA Standard of Measurement.

I. **Force Majeure:** Those items referenced in Section 17.12 below.

J. **Governmental Authority:** Any and all federal or District of Columbia governmental or quasi-governmental board, agency, authority, department or body having jurisdiction over any or all of the Leased Premises.

K. **Green Building Requirements:** All requirements of Title 6, Chapter 14A of the District of Columbia Code, as may be amended from time to time, entitled "**Green Building Requirements.**"

L. **Hazardous Material Laws**: All federal, state and local laws, statutes, ordinances and regulations including the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Resource Conservation & Recovery Act (42 U.S.C. Section 6901 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 3000 [f] et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), and comparable state laws relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable materials, explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes which are or become regulated as hazardous or toxic under any federal, state or local laws, statutes, ordinances or regulations, as may be amended from time to time (collectively, "**Hazardous Materials**").

M. **Landlord** : The District of Columbia, solely in its capacity as a contract party to this Lease, and the documents expressly contemplated to be signed in this Lease, acting through and administered by either the Office of the Deputy Mayor for Planning and Economic Development or the Department of General Services, and not any other governmental or quasi-governmental agency of the District of Columbia, such that the acts or omissions of any governmental or quasi-governmental agency of the District of Columbia, other than the District of Columbia solely in its capacity as a contract party to the Lease, and the documents expressly contemplated to be signed in this Lease, shall not constitute the acts or omissions of "**Landlord**" for the purposes of this Lease.

N. **Landlord Indemnitees**: Landlord, and the officers, directors, agents and employees of Landlord.

O. **Interest**: A rate per annum equal to the greater of (i) seven percent (7%) or (ii) the maximum permitted by law.

P. **Laws**: All federal and District of Columbia laws, statutes, codes, ordinances, regulations, rules, licenses, permits, variances, governmental orders, and Governmental Approvals including Hazardous Material Laws and Green Building Requirements which relate to or are applicable to the Leased Premises or the use, occupancy or control thereof or the conduct of any business thereon, including those relating to the making, or requiring the making, of any additions, changes, repairs or improvements, structural or otherwise, to or of the Leased Premises, or any portion thereof.

Q. **Lease Year**: Each twelve (12) month period beginning on the Rent Commencement Date, and each anniversary thereof, until the Lease Term ends or is otherwise earlier terminated in accordance herewith, provided the Rent Commencement Date occurs on the first day of a month. If the Rent Commencement Date occurs on a day other than the first day of a month, then the first Lease Year shall begin on the first day of the month following the Rent Commencement Date.

R. **Municipal Delay**: shall mean a delay by an agency of the District of Columbia (not including the Department of General Services of the District of Columbia or the Office of the Deputy Mayor for Planning and Economic Development, acting as Landlord under this Lease) in its regulatory capacity in issuing a permit. For purposes of this Delay, a Municipal Delay shall have occurred only if the time period between Tenant's submission to the appropriate agency and the approval of the applicable permit is longer than the response time required under Law or, if there is no express response time required under Law, then the typical response time for a similarly situated permit request.

S. **Partial Lease Year**: Any period during the Term which is less than a full Lease Year.

T. **Person**: An individual, firm, partnership, association, corporation, limited liability company or any other entity.

U. **Punch List Items**: Such minor items of a cosmetic nature which, when considered as a whole, do not adversely affect Tenant's ability to conduct its normal business operations in the Leased Premises for the Permitted Uses and the existence of which would not result in the Leased Premises being ineligible to receive a certificate of occupancy.

V. **Rent**: Annual Base Rent, plus Additional Rent.

W. **Tax Year**: The period designated as the tax year for the Leased Premises by the District of Columbia.

X. **Taxes**: Any and all real estate taxes and assessments (whether general or special) that are levied or assessed by any lawful authority on the Leased Premises and on all improvements thereon including without limitation all ad valorem, possessory and other taxes, assessments, business improvement district fees, water and sewer rents and charges, hook-up and tap-in fees (if any), use and occupancy taxes, development and impact fees, license and permit fees, vault space rent, leasehold taxes or taxes based upon the receipt of Rent (including gross receipts or sales taxes applicable to the receipt of Rent) and any and all other charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature

whatsoever, which are assessed, levied, confirmed, imposed, charged, or become or could become a lien upon the Leased Premises during the Term of this Lease. Notwithstanding the foregoing, Taxes shall not include personal income taxes, personal property taxes, inheritance taxes, or franchise taxes levied against Landlord, and not levied directly against the Leased Premises, even though such taxes might become a lien against the Leased Premises.

Y. **Tenant's Work**: The work and obligations to be performed by Tenant pursuant to the terms and provisions of Section 9.02 , as more particularly set forth in **Exhibit "C"** attached to this Lease and also as described in the Construction and Use Covenant.

ARTICLE II.

LEASED PREMISES

Landlord hereby demises and leases to Tenant, and Tenant hereby rents and leases from Landlord, the Leased Premises described in **Exhibit "A"**, subject to all matters affecting title to the Leased Premises as of the Lease Commencement Date and subject to the terms and conditions hereinafter set forth.

ARTICLE III.

TERM

Section 3.01 Term.

The Term shall commence on the Lease Commencement Date and expire on the Termination Date.

Section 3.02 End of Term.

This Lease shall terminate on the Termination Date without the necessity of notice from either Landlord or Tenant. Upon the Termination Date, Tenant shall quit and surrender to Landlord the Leased Premises, broom-clean, in good order and condition, ordinary wear and tear and damage by casualty and condemnation excepted; and shall surrender to Landlord all keys to or for the Leased Premises.

Section 3.03 Holding Over.

If Tenant fails to vacate the Leased Premises on the Termination Date (as the same may be extended pursuant to Section 3.03), Landlord shall have the benefit of all provisions of law respecting the speedy recovery of possession of the Leased Premises (whether by summary proceedings or otherwise). In addition to and not in limitation of the foregoing, occupancy for the period subsequent to the Termination Date (the "**Holdover Period**") shall be a tenancy at will. Occupancy of the Leased Premises by Tenant during the Holdover Period shall be subject to all terms, covenants, and conditions of the Lease (including those requiring payment of Additional Rent), except that the Annual Base Rent for each month that Tenant holds over ("**Holdover**

Annual Rent") shall be equal to One Hundred Thousand Dollars ($100,000.00) per month for each month during the Holdover Period.

ARTICLE IV.

USE AND OPERATION OF THE LEASED PREMISES

Section 4.01 Hours of Operation by Tenant and Opening Covenant.

The hours of operation of the galleries, restaurant, café and bookstore are currently contemplated to be: (i) Monday through Sunday noon to 10:00 pm for the galleries; (ii) Monday through Sunday for lunch and dinner during legal hours of operation for the restaurant; and (iii) Monday through Sunday from noon to 6:00 pm for the café and bookstore. Tenant shall operate the entire Leased Premises for the Permitted Uses continuously and uninterruptedly during the Term of this Lease, subject to periods of closure due to Force Majeure or remodeling of the Leased Premises and such other periods of closure and hours of operation as may be consistent with Tenant's program for the operation of the Leased Premises.

Section 4.02 Use.

A. Tenant shall use the Leased Premises solely for the Permitted Uses and Tenant shall not use the Leased Premises or permit the Leased Premises to be used, for any other purpose whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Tenant shall, at Tenant's sole cost and expense, comply with all Laws affecting the Leased Premises including the making of any and all alterations or other improvements to the Leased Premises as are required by Laws. In no event shall Tenant use, occupy, alter or perform any activities within the Leased Premises in a manner or for purposes which are prohibited by Laws (unless Tenant seeks and obtains the Landlord's prior written approval and appropriate variances or waivers therefrom). Tenant accepts delivery of the Leased Premises "as is, where is," with all faults existing as of the Lease Commencement Date.

B. Tenant acknowledges and agrees that (i) it is solely responsible for determining if the Permitted Uses comply with all zoning regulations, and (ii) Landlord makes no representation (explicit or implied) concerning such zoning regulations or the suitability of the Leased Premises for the Permitted Uses.

C. Tenant acknowledges that (i) nothing set forth in the Lease exempts the Leased Premises from applicable Laws, and (ii) execution of this Lease by Landlord does not affect the jurisdiction of or the exercise of police power by, any governmental authority or independent agency of the District of Columbia or the Federal government.

Section 4.03 Signs.

A. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, install any signs or plaques on the exterior of the Leased Premises or any interior signs that can be seen from the exterior of the Leased Premises (collectively, the "**Signs**" and individually, a "**Sign**"). Any Sign installed on the

exterior of the Leased Premises shall be in compliance with all Laws. Tenant, at Tenant's sole cost and expense, shall obtain all permits and licenses required in connection with any Signs installed by Tenant in or on the Leased Premises and shall be fully responsible for the installation and maintenance thereof.

B. Tenant shall submit to Landlord reasonably detailed drawings of all proposed Signs for review and approval by Landlord prior to installation or utilization of the Signs, which approval shall not be unreasonably withheld provided such drawings are in compliance with all Laws. Upon submission by Tenant to Landlord of drawings of any proposed Sign, Landlord shall have fifteen (15) Business Days to review and approve such signage requests. If Landlord has not responded to Tenant with respect to any drawings submitted for a proposed Sign within such fifteen (15) Business Days, then Tenant shall have the right to deliver a notice to Landlord containing the following language in bold font and capital letters: **THIS NOTICE IS DELIVERED PURSUANT TO SECTION 4.03 OF YOUR LEASE FOR LEASED PREMISES AT THE FRANKLIN SCHOOL LOCATED AT 925 THIRTEENTH STREET, NW, WASHINGTON, DC. IF YOU FAIL TO APPROVE OR DISAPPROVE OR SEND COMMENTS TO THOSE CERTAIN SIGN DRAWINGS DELIVERED TO YOU ON _____ FOR SIGNAGE TO BE INSTALLED AT FRANKLIN SCHOOL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE, LANDLORD WILL BE DEEMED TO HAVE APPROVED THE SIGN SHOWN IN SUCH DRAWINGS.** If Landlord fails to respond within ten (10) Business Days after receipt of such drawings, then Landlord shall be deemed to have approved the Sign described in such drawings.

C. Tenant shall maintain all Signs installed by Tenant in good condition, operating order and repair at all times. Tenant shall repair any such Signs that are damaged within ten (10) Business Days after such damage occurs. If Tenant fails to repair any installed Signs within such ten (10) Business Day period, and such failure continues for a period of five (5) Business Days (the "**Cure Period**") following receipt of Notice from Landlord specifying the required repair, subject to reasonable extension of the Cure Period by mutual agreement of the Parties, Landlord shall have the right to make such repairs at Tenant's sole cost and expense. Any costs and expenses incurred by Landlord to make such repairs shall be deemed Additional Rent and shall be payable by Tenant within five (5) Business Days after the day Landlord delivers to Tenant a reasonably detailed invoice documenting such costs and expenses.

ARTICLE V.

RENT

Section 5.01 Rent Payable.

Tenant shall pay all Rent to Landlord, without prior notice or demand (except Landlord shall give Tenant notice and demand for costs and expenses incurred by Landlord which constitute Additional Rent) and without offset, deduction or counterclaim whatsoever, in the amounts, at the rates and times set forth herein, and at such place as is provided in Section 1.01, or at such other place as Landlord may from time to time designate by notice to Tenant.

Section 5.02 Payment of Rent.

Tenant shall pay Landlord the Annual Base Rent in advance, commencing on the Rent Commencement Date, and on the anniversary of each Rent Commencement Date thereafter throughout the Term of this Lease.

Section 5.03 Payment of Taxes.

A. Commencing on the Rent Commencement Date, Tenant covenants and agrees to pay, upon the same first becoming due and payable, before any penalty, fine, interest or cost would become payable thereon for non-payment, any and all Taxes applicable to or assessed against the Leased Premises (which is deemed to include the land and all improvements situated thereon). Tenant shall timely pay all such Taxes to be paid by it directly to the appropriate authority and shall submit to Landlord promptly after making payment copies of the official receipts or other evidence of payment reasonably acceptable to Landlord.

B. Notwithstanding the foregoing, Tenant shall not be responsible for any Taxes charged against or imposed on all or any portion of the Leased Premises which accrued prior to the Lease Commencement Date. All Taxes for the Tax Year in which the Term of this Lease commences, as well as during the year in which the Term expires, shall be apportioned so that the Tenant shall pay its proportionate share of the Taxes which are payable in the year in which the Term commences and in the year in which the Term expires. Any sum payable by Tenant, as provided in this Article V, which would not otherwise be due until after the Termination Date (but attributable to the period of time preceding such Termination Date), shall be paid by Tenant to Landlord on or before the Termination Date.

C. Where any Taxes are permitted by Law to be paid in installments, Tenant may pay such Taxes in installments as and when such installments become due; provided, however, that the amount of all installments of any such Taxes which are to become due and payable after the Termination Date shall not be apportioned (except as provided in Section 5.04.B hereof).

D. Notwithstanding any other provision hereof, Tenant, may, at Tenant's sole cost and expense, contest in good faith and diligently any Taxes to the extent permitted by Laws; provided that Tenant shall pay all such Taxes prior to the imposition of any penalties, fees or other liabilities in connection therewith if required to do so by Law in order to contest same or shall have furnished a good and sufficient bond or surety reasonably satisfactory to Landlord or, at Tenant's option, deposited with Landlord the amount of the item so contested (or, where permitted by Law, paid the same under protest), together with such additional sums as may reasonably be required to cover interest or penalties accrued or to accrue on any such item or items. Except with respect to Taxes directly imposed on Tenant, Landlord shall provide all reasonable assistance to Tenant in any such contest proceeding provided that if Landlord incurs any third-party out-of-pocket costs or expensesin connection with providing such assistance, Tenant shall reimburse Landlord the amount thereof upon demand and presentation of a reasonably detailed invoice therefor (but Landlord shall not incur any such expense without Tenant's prior written approval, which can be given or withheld in Tenant's sole and absolute discretion). Landlord shall not be required to join in any proceedings referred to in this Section unless the provisions of any Laws at the time in effect

shall require that such proceedings be brought by or in the name of the owner of the Leased Premises. In such event, Landlord shall join in such proceedings.

Section 5.04 Taxes on Tenant's Personal Property.

Tenant shall pay all governmental taxes, charges, fees and assessments applicable to Tenant's Property (as hereinafter defined in Section 9.05 of this Lease) and the Rent before they become delinquent.

ARTICLE VI.

NET LEASE

Section 6.01 Triple Net Lease.

This is a triple net lease and Landlord shall not be required to provide or pay for any services or do any act or thing with respect to the Leased Premises or the appurtenances thereto, except as specifically provided herein. Tenant shall pay the Rent to Landlord without any claim on the part of Tenant for diminution, set off or abatement, and nothing shall suspend, abate or reduce any Rent to be paid hereunder, except as otherwise specifically provided in this Lease.

ARTICLE VII.

UTILITIES

Section 7.01 Utility Charges.

Tenant shall pay for all water, gas, electricity, telephone, sewer, heat, steam, fuel, and all other services and utilities of every kind and nature supplied to the Leased Premises from and after the Lease Commencement Date. Tenant shall be solely responsible for the connection, hook-up, and tap-ins to utility lines, and arrangements for utility service, including the payment of all impact fees, deposits, fees and all other charges and costs incurred in connection therewith during the Term of this Lease. Landlord shall reasonably cooperate with Tenant, at no cost to Landlord, to cause the accounts for such utilities and services, if any, to be transferred to Tenant.

ARTICLE VIII.

INDEMNITY AND INSURANCE

Section 8.01 Indemnity.

A. Except as otherwise provided in this Section, Tenant agrees, to the fullest extent permitted by Law, to indemnify, hold harmless and defend Landlord's Indemnitees from and against any and all claims, losses, actions, damages, liabilities and expenses (including reasonable attorneys' fees and disbursements) that arise from or are in connection with (i) Tenant's possession, use, occupancy, management, repair, maintenance or control of all or any part of the

Leased Premises, the making or removal of alterations or improvements to the Leased Premises and the performance of all related construction work, or that relate in any manner to the business conducted by Tenant in the Leased Premises, (ii) any willful or negligent act or omission of Tenant or its agents, employees or contractors on the Leased Premises, (iii) any injury or death to individuals or damage to any property sustained within the Leased Premises, or (iv) a default or breach of a representation by Tenant under this Lease. Landlord may, at its option, require Tenant to assume Landlord's defense in any action covered by this Section 8.01.A. through counsel selected by Tenant who is reasonably satisfactory to Landlord. Tenant shall not be obligated to indemnify Landlord's Indemnitees against loss, liability, damage, cost or expense arising solely out of (a) any breach of this Lease by Landlord, or (b) the willful or negligent acts or omissions of any of Landlord's Indemnitees. The terms and provisions of this Section 8.01 shall survive the termination of this Lease, in respect of matters arising from acts, omissions or neglect occurring during the Term of this Lease for the period afforded to Landlord's Indemnitees under the applicable statute of limitations. Should any claim be made against Landlord or Landlord's Indemnitees or an action or proceeding be brought against any of them as set forth in this Section, Landlord agrees to give Tenant reasonably prompt written notice thereof so as to enable Tenant to resist or defend such claim, action or proceeding. Should any claim be made against Tenant or an action or proceeding be brought against Tenant or any of Tenant's agents, employees or contractors acting by, under or through Tenant, Tenant shall give Landlord prompt written notice thereof.

B. Notwithstanding the foregoing, the indemnifications and defense obligations by Tenant under this Lease shall not cover, and Tenant shall not be liable for, any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the Leased Premises suffered by Landlord and/or Landlord's Indemnitees (excluding Rent due hereunder).

Section 8.02 Landlord Not Responsible for Acts of Others.

From the Lease Commencement Date, Tenant is and shall be in exclusive control and possession of the Leased Premises. Notwithstanding anything to the contrary in this Lease, Landlord shall not, in any event whatsoever, be liable for any injury, loss, claim or damage to any property or person which occurs on or about the Leased Premises, or for any injury, loss, claim or damage to any property of any tenant, Tenant, business invitee, guest, or licensee of Tenant, except to the extent caused by any willful or negligent act or omission of any of Landlord's Indemnitees during any permitted entry of the Leased Premises. Landlord's Indemnitees shall not be liable for, and Tenant waives all claims against them for loss or damage to Tenant's business or injury, loss, claim or damage to any Person or property sustained by Tenant, or claim resulting from any accident or occurrence in, on, or about the Leased Premises, including claims for loss, theft, injury or damage resulting from, but not limited to: (i) any equipment or appurtenances being or becoming out of repair; (ii) wind, weather, earthquake or other act of God; (iii) any defect in or failure to operate any sprinkler, HVAC equipment, electric wiring, gas, water or steam pipe, stair, railing or walk; (iv) broken glass; (v) the backing up of any sewer pipe or downspout; (vi) the escape of gas, steam or water; (vii) water, snow or ice being upon the Leased Premises or coming into the Leased Premises; (viii) the falling of any fixture, plaster, tile, stucco or other material; and (ix) any act, omission or negligence of other tenants, guests, invitees, licensees of Tenant or any other Persons including occupants of adjoining or contiguous buildings, owners of adjacent or

contiguous property, or the public, unless any such loss, theft, injury or damage arises out of the willful or negligent acts or omissions of Landlord's Indemnitees.

Section 8.03 Tenant's Insurance.

Tenant, at its sole cost and expense, shall keep the Leased Premises, the Building and all Leasehold Improvements (as defined in Section 9.05 insured, and will name Landlord as an additional insured thereunder during the Term against loss or damage by fire, windstorm, hazard, theft, vandalism, malicious mischief and sprinkler leakage, and such other insurable risks as Landlord may reasonably specify from time to time for no less than an amount equal to their replacement cost, without deduction for depreciation, which replacement cost shall be determined, at no cost to Landlord, at annual intervals by one or more of the insurers or by an architect, contractor, or appraiser selected by Tenant and approved by Landlord. Commencing on the Lease Commencement Date and at all times thereafter, Tenant shall carry and maintain, at its sole cost and expense:

A. Commercial General Liability Insurance (ISO form or equivalent) naming Tenant as the named insured and Landlord as an additional insured, protecting Tenant and the additional insured against liability for bodily injury, death and property damage occurring upon or in the Leased Premises, with a minimum combined single limit of Two Million Dollars ($2,000,000.00) and a general aggregate limit of Five Million Dollars ($5,000,000.00).

B. "Special Form" property insurance covering the Building, the Leasehold Improvements and Tenant's Property written for at least the full replacement cost with a deductible of not more than Five Thousand Dollars ($5,000.00), and with full coverage for changes in permit requirements in connection with reconstruction after casualty.

C. Workmen's compensation insurance (in statutorily required amounts and policy forms).

D. Flood insurance (if the Leased Premises are determined to be within a flood hazard area) and such other policies of insurance covering other insurable perils which are customarily insured against in the case of comparable properties in the District of Columbia and in such amounts as may from time to time be reasonably required by Landlord or as may be required by law.

E. Appropriate employer's liability insurance in an amount not less than One Million Dollars ($1,000,000.00) per accident; One Million Dollars ($1,000,000.00) per employee; One Million Dollars ($1,000,000.00) policy limit.

F. Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Lease, the amount of such coverage shall be subject to Landlord's annual review. In the event Landlord, in its reasonable judgment, deems the coverage required under this Section insufficient based on standard practice in connection with comparable properties and with comparable tenants in the District of Columbia after any such annual review, Tenant shall increase the amount or type of coverage required hereby by Landlord, provided such increase shall be commercially reasonable.

Section 8.04 Tenant's Contractor's Insurance.

Tenant shall carry, or cause any contractor performing work on the Leased Premises to obtain, carry and maintain, at no expense to Landlord: (i) worker's compensation insurance and employer's liability insurance as required by the District of Columbia; (ii) builder's risk insurance with a deductible no greater than Twenty-Five Thousand Dollars ($25,000.00), or such other amount as may be approved by Landlord, in the amount of the full replacement cost of the Building, and the Leasehold Improvements; (iii) Commercial General Liability Insurance providing on an occurrence basis a minimum combined single limit of Two Million Dollars ($2,000,000.00) per occurrence (and Five Million Dollars ($5,000,000.00) general aggregate, if applicable); and (iv) business automobile liability insurance including the ownership, maintenance and operation of the automotive equipment, owned, hired and non-owned coverage with a combined single limit of not less than Two Million Dollars ($2,000,000.00) for bodily injury and property damage. If the contractor fails to acquire such insurance, Tenant shall provide such insurance (except worker's compensation insurance and employer's liability) at no cost to Landlord, and Tenant may seek reimbursement of such cost from such contractor.

Section 8.05 Policy Requirements.

Any company writing any insurance which Tenant is required to maintain or cause to be maintained under Sections 8.03 and 8.04 as well as any other insurance pertaining to the Leased Premises or the operation of Tenant's business therein (all such insurance being referred to as "**Tenant's Insurance**") shall at all times be licensed and qualified to do business in the District of Columbia and shall have received an A or better (and be in a financial size category of class VII or higher) rating by the latest edition of A.M. Best's Insurance Rating Service. All policies of Tenant's Insurance shall contain endorsements requiring the insurer(s) to give notice to Landlord at least thirty (30) days in advance of any material reduction, cancellation, termination or non-renewal of said insurance. Tenant shall be solely responsible for payment of premiums for all of Tenant's Insurance. On each anniversary of the Lease Commencement Date, Tenant shall deliver to Landlord a certificate of insurance for all policies procured by Tenant in compliance with its obligations under the Lease and, at least fifteen (15) days prior to the expiration of the term of any such policy that Tenant is renewing rather than replacing, Tenant shall deliver to Landlord a certificate of insurance evidencing its renewal. The limits of Tenant's Insurance shall not limit Tenant's liability under the Lease, at law, or in equity. If Tenant fails to deposit a certificate of insurance with Landlord for a period of seven (7) days after notice from Landlord stating that such certificate is due, Landlord may acquire such insurance, and Tenant shall pay Landlord the amount of the premium applicable thereto within five (5) Business Days following notice from Landlord together with an invoice for such premium.

Section 8.06 Waiver of Right of Recovery.

Notwithstanding anything in this Lease to the contrary, Tenant hereby waives and releases Landlord's Indemnitees of and from any and all rights of recovery, claims, or causes of action, whether by subrogation or otherwise, against Landlord's Indemnitees, for any loss or damage that may occur to the Leased Premises, Tenant's Property or to Leasehold Improvements (regardless of cause or origin, including negligence of any of Landlord's Indemnitees), which loss or damage is insured against or is required to be insured against hereunder. Tenant agrees immediately to give

to each insurance company, written notice of the terms of the waivers of subrogation contained in this paragraph, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason thereof.

ARTICLE IX.

CONSTRUCTION AND ALTERATIONS

Section 9.01 Condition of Leased Premises.

As of the Lease Commencement Date, Tenant acknowledges that: (i) Tenant has inspected the Leased Premises; (ii) Tenant accepts the Leased Premises, and all improvements, betterments and equipment "AS IS", with all faults, with no representation or warranty by Landlord, express or implied, as to the condition or suitability of the Leased Premises for Tenant's purpose, except as specifically set forth in this Lease; and (iii) Landlord has no obligation to construct, improve, maintain or repair the Leased Premises, except as specifically set forth in this Lease.

Section 9.02 Tenant's Work.

A. Tenant shall remodel, renovate and refurbish the Leased Premises, including the making of all improvements, alterations and changes to the Premises necessary to place same in accordance with applicable Laws, in a modern and attractive condition and to enable Tenant to properly use the Premises for the Permitted Uses, all of such improvements hereinafter referred to as **"Tenant's Work"**. Tenant has submitted to Landlord a proposed scope of work for Tenant's Work setting forth in detail the work to be performed (the "**Scope**"), together with an estimated Schedule of Performance (the "**Schedule**") and an estimated budget (the "**Budget**"), which Scope, Schedule, and Budget are set forth in **Exhibit "C"**. The Scope of the Tenant's Work, the Budget and the Schedule set forth in **Exhibit "C"** may be modified at any time or times only with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

B. All of Tenant's Work shall be performed by Tenant in accordance with detailed plans and specifications, to be prepared by Tenant's architect and submitted to and approved by Landlord in accordance with the Construction and Use Covenant.

C. Tenant shall perform and complete Tenant's Work in accordance with the timelines and dates set forth in the Schedule subject to Force Majeure and applicable Municipal Delay. Subject to Force Majeure and applicable Muncipal Delay, if Tenant, in accordance with the Schedule: (i) fails to timely commence Tenant's Work, (ii) fails to diligently pursue completion of Tenant's Work, or (iii) fails to complete Tenant's Work, then any such failure shall constitute a default under this Lease.

D. All of Tenant's Work shall be: (i) performed by Tenant substantially in accordance with detailed plans and specifications, to be prepared by Tenant's architect and provided to Landlord for Landlord's approval as more particularly set forth in the Construction and Use Covenant, (ii) shall be completed by the appropriate milestones set forth in the Schedule

as set forth in Section 9.02 hereof, and (iii) shall be performed pursuant to the Budget approved by Landlord as set forth in Section 9.02 hereof.

Section 9.03 Alterations.

Except as otherwise provided herein, after final Completion of the Tenant's Work, Tenant shall not make or cause to be made any alterations, additions, renovations, improvements or installations in or to the Leased Premises (hereinafter singularly referred to as an "**Alteration**" and collectively as "**Alterations**") without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Lease, Tenant may make or cause to be made any Alteration without Landlord's consent provided that such Alteration does not: (i) materially alter, impair or modify the structure of the Building or any base Building system, (ii) change the floor area, total volume or height of the Building, (iii) modify in any material respect the basic character and function of the Building, (iv) materially modify the external appearance of the Building, (v) increase the overall square footage of enclosed building space on the Leased Premises, or (vi) cost in excess of One Million Dollars ($1,000,000.00), individually or in the aggregate in any 12 month period (it being understood and agreed that such One Million Dollar ($1,000,000.00) threshold shall increase by successive increments of Two Hundred Thousand Dollars ($200,000.00) on each five year anniversary of the Lease Commencement Date). Notwithstanding the foregoing, Tenant shall have the right, at any time and from time to time, as often and frequently as Tenant wishes, to make Alterations to the interior of the Building that are are cosmetic in nature, including without limitation, painting and floor coverings, as Tenant in Tenant's sole and absolute discretion shall deem necessary or desirable, without the necessity of notifying Landlord thereof or securing Landlord's permission or consent therefor. In the event of an emergency which threatens life, safety or property, Tenant shall have the right, without Landlord's consent, to make all necessary repairs and/or Alterations that are reasonably required to abate the emergency.

Section 9.04 Work Requirements.

A. All work performed by Tenant in the Leased Premises, including without limitation Tenant's Work and Alterations, shall be performed: (i) promptly and once commenced diligently pursued to timely Completion as set forth in the Schedule; (ii) in a good and workmanlike manner, with new materials; (iii) by duly qualified, insured and licensed (and bonded (if required by Laws) Persons; and (iv) in accordance with (a) if the work requires Landlord's consent pursuant to Section 9.03 and to the extent applicable, plans and specifications approved in writing in advance by Landlord (as to both design and materials) which approval may not be unreasonably withheld, conditioned or delayed, and (b) all Laws. Within thirty (30) days after Completion of any Alterations, including Tenant's Work, Tenant shall deliver to Landlord a reproducible copy of any "as built" drawings of such work as well as copies of all permits, approvals and other documents issued by any governmental agency in connection with such work. If Tenant fails to comply with the requirements under this Section within ten (10) Business Days after receipt of a Notice from Landlord requesting the missing items, then Tenant shall be deemed to be in default.

B. No Alteration which requires Landlord's consent shall be made until all Plans and Specifications for any such Alteration have been approved or deemed approved by

Landlord as hereinafter provided, such consent not to be unreasonably withheld, conditioned or delayed. Landlord shall have fifteen (15) Business Days ("**Landlord's Review Period**") from its receipt of all Plans and Specifications (or revisions to the Plans and Specifications) to review and advise Tenant of its approval or of any changes Landlord requires to be made. Within ten (10) Business Days after receipt of Landlord's notice requesting changes (if any), Tenant shall cause all such changes to be made, and Tenant shall resubmit the revised Plans and Specifications for Landlord's review. The revisions and resubmission shall continue until Landlord shall have approved, or shall be deemed to have approved, Tenant's Plans and Specifications. In the event that Landlord has not responded to Tenant within Landlord's Review Period, then Tenant shall have the right to deliver a notice (the "**Reminder Notice**") to Landlord containing the following language in bold font and capital letters: **THIS NOTICE IS DELIVERED PURSUANT TO SECTION 9.04 OF YOUR LEASE FOR LEASED PREMISES AT 925 13TH STREET, NW, WASHINGTON, DC. IF YOU FAIL TO APPROVE OR DISAPPROVE OR SEND COMMENTS TO THOSE CERTAIN PLANS AND SPECIFICATIONS DELIVERED TO YOU ON _____ FOR WORK TO BE DONE AT 925 13th STREET WASHINGTON, DC WITHIN TEN (10) BUSINESS DAYS OF LANDLORD'S RECEIPT OF THIS NOTICE, LANDLORD WILL BE DEEMED TO HAVE APPROVED SUCH PLANS AND SPECIFICATIONS.** If Landlord fails to respond within ten (10) Business Days after receipt of the Reminder Notice , then Landlord shall be deemed to have approved such Plans and Specifications for Tenant's Work.

C. The approval by Landlord of the Plans and Specifications, if given, shall not (i) imply Landlord's approval of the structural or engineering designs as to quality or fitness of any material or device used; (ii) imply that the Plans and Specifications are in accordance with the Law (it being agreed that determination of such compliance is solely Tenant's responsibility); (iii) relieve Tenant of the responsibility to construct structurally sound improvements which are free of defects; (iv) impose any liability on Landlord or any third party; or (v) serve as a waiver or forfeiture of any right of Landlord.

Section 9.05 Ownership of Improvements.

All present and future Alterations, additions, renovations, improvements and installations (not to include installations of art, or restaurant kitchen fixtures if: (i) a lender has a security interest in such restaurant fixtures, or (ii) the removal of such restaurant fixtures would not damage the interior of the Leased Premises) on or within the Leased Premises (collectively, the "**Leasehold Improvements**") shall be deemed to be the property of Landlord, and upon Tenant's vacation or abandonment of the Leased Premises, or upon termination of the Lease, shall remain upon and be surrendered with the Leased Premises. All art, movable goods, inventory, office equipment, trade fixtures and any other movable personal property belonging to Tenant that are not permanently affixed to the Building (collectively, "**Tenant's Property**") shall remain the property of Tenant, and shall be removable by Tenant at any time, provided that Tenant shall repair any damage to the Leased Premises caused by the removal of any of Tenant's Property.

Section 9.06 Removal of Tenant's Property.

Tenant shall remove all of Tenant's Property prior to the Termination Date or the termination of Tenant's right to possession, whichever occurs first. Tenant shall repair any

damage to the Leased Premises caused by such removal. If Tenant fails to timely remove any of Tenant's Property (collectively, the "**Items**"), the Items shall be considered as abandoned and shall become the property of Landlord, or Landlord may have them removed and disposed of at Tenant's cost and expense, which cost and expense shall not be commercially unreasonable.

Section 9.07 Mechanic's Liens.

A. No mechanic's or other lien (except for the leasehold mortgage lien of any Approved Mortgagee) shall be allowed against the Leased Premises as a result of Tenant's improvements, Alterations or other work done by or on behalf of Tenant at or to the Leased Premises. Landlord shall have the right, at Tenant's sole cost, to record and post notices of non-responsibility in or on the Leased Premises.

B. Tenant shall promptly pay all persons furnishing labor, materials or services with respect to any work performed by Tenant on the Leased Premises. If any mechanic's or other lien shall be filed against the Leased Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to or for the benefit of Tenant, Tenant shall cause the same to be discharged of record or bonded to the satisfaction of Landlord within thirty (30) days subsequent to the filing and service thereof. If Tenant fails to discharge or bond any such lien, Landlord, in addition to all other rights or remedies provided in this Lease, may bond said lien or claim (or pay off said lien or claim if it cannot in Landlord's sole, but reasonable, determination, be bonded) without inquiring into the validity thereof, and all expenses incurred by Landlord in so discharging said lien, including attorneys' fees, shall be paid by Tenant to Landlord as Additional Rent with the next installment of Annual Base Rent due after Landlord delivers Notice thereof to Tenant together with copies of the invoice(s) evidencing such expenses.

ARTICLE X.

REPAIRS, MAINTENANCE, AND LANDLORD'S ACCESS

Section 10.01 Repairs by Landlord.

Notwithstanding any other provisions of this Lease, in no event shall Landlord be responsible for any construction, maintenance or repair of the Leased Premises, including the Building, the Leasehold Improvements and/ or any of Tenant's Property.

Section 10.02 Repairs and Maintenance by Tenant.

A. Throughout the Term, Tenant shall maintain the Leased Premises including the Building, any and all Leasehold Improvements and all of Tenant's Property in good working order, condition and repair and in compliance with all Laws. Tenant shall not cause or permit any waste, damage or injury to the Leased Premises. Furthermore, Tenant (i) shall initiate and carry out a program of regular maintenance and repair of the Leased Premises so as to keep the same in an attractive condition similar to other comparable spaces in the District of Columbia throughout the Term, and (ii) remodel or refurbish the Building as reasonably necessary to maintain the same in attractive condition in accordance with plans approved by Landlord.

B. Tenant shall install and maintain such fire extinguishers and other fire protection devices in any Building as may be required by any agency having jurisdiction over, or by the underwriters issuing insurance for, the Leased Premises. Tenant agrees to routine inspections of fire protection devices by contractors reasonably acceptable to Landlord. If any Governmental Authority requires the installation, modification, or alteration of the sprinkler system, or other equipment, then Tenant, at Tenant's sole cost and expense, shall promptly install such sprinkler system or changes therein.

C. Tenant shall keep the sidewalks adjoining the Leased Premises free from ice and snow and shall not permit the accumulation of garbage, trash or other waste in or around the Leased Premises except if stored in suitable containers for pick up by trash collectors.

Section 10.03 **Inspections, Access and Emergency Repairs by Landlord.**

Upon reasonable prior notice and without materially adversely affecting Tenant's business within the Leased Premises, Tenant shall permit Landlord or its designee to enter all parts of the Leased Premises to inspect the same. In the event of an emergency such that imminent damage to the Leased Premises or injury is likely, Landlord may enter the Leased Premises at any time and make such inspection and repairs as Landlord deems necessary, at the sole cost and risk and for the account of Tenant.

ARTICLE XI.

CASUALTY

Section 11.01 **Fire or Other Casualty.**

Tenant shall give prompt notice to Landlord in case of fire or other casualty ("**Casualty**") to all or any part of the Leased Premises.

Section 11.02 **Right to Terminate.**

A. If the Leased Premises shall be damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof during the last two (2) Lease Years of the Term or in any Partial Lease Year at the end of the Term, then, in such event, Tenant may terminate this Lease by notice to Landlord prior to the sixtieth (60th) day after the later to occur of (i) the date when the damage occurred, or (ii) the date when the cost of replacement is determined as hereinafter provided. If Tenant so terminates this Lease, then the Termination Date shall be the date set forth in Tenant's notice, which date shall not be less than thirty (30) days nor more than ninety (90) days after the giving of said notice. The "**cost of replacement**" shall be determined by the company or companies insuring against the Casualty in question, or if there shall be no such determination, by a person reasonably selected by Landlord who is qualified to determine such cost of replacement.

B. Further, in the event Tenant has failed to or elects not to restore the Leased Premises as set forth in Section 11.03 below, Landlord may terminate this Lease at any time upon thirty (30) days' prior written notice to Tenant.

C. If Tenant fails to commence the repairs, restoration and rebuilding of the damaged Leased Premises within nine (9) full calendar months from the date of such Casualty, or once commenced, fails to diligently pursue the repairs, restoration and rebuilding required under Section 11.03 below, in each case, subject to Force Majeure, Landlord shall have the option, in Landlord's sole and absolute discretion, to terminate this Lease by written notice to Tenant. Notwithstanding the foregoing, so long as Tenant is diligently pursuing obtaining architectural plans and drawings necessary to repair, restore or rebuild the Leased Premises, Landlord shall not be entitled to terminate this Lease pursuant to this Section 11.02C provided that Tenant commences the repairs, restoration and rebuilding within eighteen (18) full calendar months from the date of such Casualty.

Section 11.03 **Tenant's Duty to Reconstruct.**

A. Provided this Lease is not terminated pursuant to Section 11.02 and Landlord makes restoration proceeds from Tenant's insurance policy or policies available to Tenant, Tenant shall promptly commence and diligently pursue to completion (i) the repair of the Leased Premises including the Building and all Leasehold Improvements to substantially the same condition as existed prior to the Casualty, and (ii) the redecorating and refixturing of the Building to a substantially similar condition as existed prior to the Casualty. Tenant shall reopen for business in the Building as soon as practicable after the occurrence of the Casualty. Subject to reasonable delay for completion of architectural plans and drawings and obtaining a building permit based thereon, such restoration shall be commenced within nine (9) months from the date of Casualty and once commenced, diligently pursued to Completion. Tenant shall use reasonable efforts to pursue its insurance claims with its insurance carrier, and Complete the restoration work within a commercially reasonable time, free and clear of all liens and encumbrances except for any Leasehold Mortgage.

B. Notwithstanding the foregoing, in the event that the Building and all Leasehold Improvements shall be damaged to the extent of more than fifty percent (50%) of the cost of replacement thereof at any time after the tenth (10^{th}) Lease Year, Tenant shall not be obligated to rebuild and/or restore the Building, and in such event, Tenant may terminate this Lease by written notice to Landlord ("**Tenant's Damage Termination Notice**") prior to the sixtieth (60th) day after the later to occur of (i) the date when the damage occurred, or (ii) the date when the cost of replacement is determined as hereinafter provided. If Tenant so terminates this Lease, then the Termination Date shall be the date set forth in Tenant's Damage Termination Notice, which date shall not be less than thirty (30) days nor more than ninety (90) days after the giving of Tenant's Damage Termination Notice. In no event, however, shall the Lease terminate in the event of a Casualty nor shall Tenant be released of its Rent or other monetary obligations under the Lease unless the Lease is terminated pursuant to the provisions of this Section 11.03 or Section 11.02 above. If Tenant elects not to restore the Building and all Leasehold Improvements to its prior condition pursuant to the provisions of this Section 11.03, Tenant shall proceed, within sixty (60) days after later to occur of (i) the date when the damage occurred, or (ii) the date when

the cost of replacement is determined, to remove all debris and grade, seed where appropriate and restore the site to a clean and presentable condition.

C. In the event Landlord or Tenant elects to terminate this Lease in accordance with the provisions of Section 11.02 hereof or this Section 11.03, then all insurance proceeds shall be payable as follows: (i) to Tenant, an amount sufficient to pay all actual reasonable costs to secure the Building and the Leased Premises, to clear the Building of partially damaged or destroyed improvements and debris; and for cleaning, grading, seeding (if appropriate) and restoration of the surface of the affected portion of the Leased Premises, (ii) to the holder of any Leasehold Mortgage, an amount sufficient to pay all amounts owed by Tenant to such holder, (iii) to Tenant, an amount equal to the insured value of Tenant's Property located on the Leased Premises and not secured by the Leasehold Mortgage, and (iv) the balance thereof to Landlord.

D. If the Building is damaged by Casualty and the Lease is not terminated as provided in this Article XI, then in such event Landlord shall retain all of the insurance proceeds under the policy covering the Building and Leasehold Improvements carried by Tenant under Section 8.03.B, and shall disburse same to Tenant so that Tenant may effect restoration, subject however, to the rights of any Approved Mortgagee under any Leasehold Mortgage to monitor the application of the insurance proceeds for the restoration and reconstruction the Building and Leasehold Improvements.

ARTICLE XII.

CONDEMNATION

Section 12.01 Taking of Leased Premises.

A. If more than twenty-five percent (25%) of the Floor Area of the Building shall be appropriated or taken under the power of condemnation, eminent domain, or conveyance shall be made in anticipation or in lieu thereof ("**Taking**"), Tenant may terminate this Lease as of the effective date of the Taking by giving notice to Landlord of such election at any time after receipt of notice of such Taking, but in all events not more than thirty (30) days after the date of such Taking.

B. If there is a Taking of a portion of the Leased Premises, Tenant shall have the right to terminate the Lease at the same time and in the manner provided in Section 12.01.A if, in Tenant's reasonable judgment, the portion of the Leased Premises remaining cannot be reasonably utilized for the operation of Tenant's business.

C. If there is a Taking of a portion of the Building and this Lease shall not be terminated pursuant to Section 12.01.A or Section 12.01.B, then (i) as of the effective date of the Taking, this Lease shall terminate only with respect to the portion of the Leased Premises taken by condemnation, eminent domain or conveyance in lieu thereof; and (ii) as soon as reasonably possible after the effective date of the Taking, Tenant, at its expense and to the extent feasible, shall restore the remaining portion of the Building to a complete unit of a similar condition as existed prior to the Taking.

D. If there is a Taking of any portion of the Leased Premises so as to render, in Tenant's judgment, the remainder of the Leased Premises unsuitable for the Primary Permitted Uses, Tenant shall have the right to terminate this Lease upon thirty (30) days' notice to Landlord.

Section 12.02 **Condemnation Award.**

Except as otherwise provided herein, all compensation awarded for a Taking of any part of the Leased Premises shall belong to Landlord. Tenant hereby assigns to Landlord all of its right, title and interest in any such award. Tenant shall have the right to collect and pursue any separate award as may be available under local procedure for moving expenses, Tenant's Property and the value of the leasehold estate. If the Lease is terminated as a result of any Taking of the Leased Premises, Tenant shall also be entitled to make a claim for and recover from the condemning authority the value of the Tenant's Property. If any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Leased Premises, Landlord shall promptly give Tenant and any Approved Mortgagee written notice thereof. To the extent permitted by law, this Section 12.02 shall be construed as superseding any statutory provisions now in force or hereafter enacted concerning condemnation proceedings. If such court is prohibited by law from making separate awards to Landlord and Tenant, or declines to do so, then the award in such condemnation proceedings shall be divided between Landlord and Tenant so that each receives the amount it would have received if separate awards had been made pursuant to this Section.

Section 12.03 **Rights of Approved Mortgagee.**

Landlord and Tenant further agree and acknowledge that any right of Landlord in and to condemnation proceeds applicable to the leasehold estate (but not the fee simple estate in the Leased Premises, Landlord's interest under this Lease or the value of the Landord's Property) shall be and remain subordinate and inferior to the interests in such proceeds held by any Approved Mortgagee. Under no circumstances whatsoever shall Landlord maintain that it has any right or claim of any kind or nature in and to any condemnation proceeds applicable to the leasehold estate (but not the fee simple estate in the Leased Premises, Landlord's interest under this Lease or the value of Landlord's Property) of equal priority or superior to the interest in such proceeds held by any Approved Mortgagee. If there is an Approved Mortgagee, such Approved Mortgagee shall, to the extent permitted by law, be made a party to any condemnation proceeding, if it so desires to be made a party. Tenant's share of the proceeds arising from condemnation or eminent domain proceedings shall be disposed of as provided for by any Leasehold Mortgage.

ARTICLE XIII.

LEASEHOLD MORTGAGE PROVISIONS

Section 13.01 **Approved Mortgagee.**

A. The term "**Approved Mortgagee**" shall mean only the holder of a Leasehold Mortgage (as defined herein) pursuant to Permitted Financing (as defined herein) who has notified Landlord pursuant to Section 13.03 below, and which holder shall be (i) an

Institutional Lender, or (ii) a non-Institutional Lender reasonably approved by Landlord. Notwithstanding anything to the contrary in this Lease, Tenant may mortgage its leasehold estate under this Lease under a Leasehold Mortgage with an Approved Mortgagee at any time and from time to time; *provided, however*, that if Landlord fails to approve or disapprove a non-Institutional Lender to be an Approved Mortgagee within thirty (30) calendar days from Tenant's request for such approval, such non-Institutional Lender shall be deemed approved by Landlord and shall be an Approved Mortgagee hereunder. In addition, any Leasehold Mortgage or similar instrument that evidences an Approved Mortgagee's security interest in the leasehold estate shall provide for the following and shall have agreed in writing with Landlord in recordable form that:

(i) prior to initiating any foreclosure proceedings under any Leasehold Mortgage, the Approved Mortgagee shall first offer to Landlord in writing, the option (with no obligation upon Landlord to exercise same) for Landlord to fully satisfy Tenant's obligations under the Leasehold Mortgage, at par, to be exercised within ninety (90) calendar days of delivery of written notice to Landlord of Approved Mortgagee's intent to initiate foreclosure proceedings, which notice shall include the amount of Tenant's outstanding obligations to such Approved Mortgagee;

(ii) assuming Landlord has not exercised the option described in Section 13.01(A)(i), prior to acquiring the leasehold estate of Tenant in connection with foreclosure proceedings, or any conveyance in lieu of foreclosure, and prior to any further conveyance of the leasehold estate subsequent to any such foreclosure or conveyance in lieu of foreclosure, Approved Mortgagee (or any successor or acquirer of the leasehold estate) shall offer the leasehold estate for sale to Landlord in writing on the same material terms and conditions being offered by or to any third party, whereupon Landlord will have a ninety (90) day period to determine whether to exercise its option to purchase the leasehold estate on such terms and conditions (but shall be under no obligation to do so), failing which Approved Mortgagee (or other successor or acquirer of the leasehold estate at foreclosure) may, subject to this Lease, so convey the leasehold estate to such third party on such particular terms and conditions;

(iii) that upon any default under the Leasehold Mortgage which remains uncured after the expiration of any applicable notice and cure period, such Approved Mortgagee will apply or cause to be applied any rents or other monies received from any subtenant at the Leased Premises or assignee or licensee of Tenant in excess of the monthly amount due and payable by Tenant (excluding the portion remitted to Landlord pursuant to Article XV) under such Leasehold Mortgagee to the Rent due under this Lease from and after the expiration of the applicable notice and cure period;

(iv) it acknowledges the terms of this Lease;

(v) It acknowledges that the collateral for the Leasehold Mortgage shall constitute only the leasehold estate held by Tenant under this Lease, which shall include the Tenant Property but shall specifically not include the Leasehold Improvements.

B. The term "**Leasehold Mortgage**" as used in this Lease shall mean a mortgage, deed of trust or other security instrument from an Approved Mortgagee by which

Tenant's leasehold interest in the Leased Premises and the Improvements are mortgaged, conveyed, assigned or otherwise transferred to an Approved Mortgagee, to secure a debt or other obligation which secures a loan for the construction, operation, repair and/or maintenance of the Leased Premises and the Improvements providing by its terms to be paid in full no later than the expiration of the Term of this Lease (which, for these purposes, will include the Option Period). The holder of a Leasehold Mortgage shall be a "**Leasehold Mortgagee.**" The term "**Permitted Financing**" as used in this Lease shall mean any financing obtained by Tenant from an Approved Mortgagee pursuant to this Section 13 with respect to the Leased Premises and the Improvements, pursuant to which financing the Approved Mortgagee holds a security interest constituting a lien against Tenant's leasehold estate hereunder.

C. Landlord will not subordinate its interests in the Leased Premises to any Leasehold Mortgagee in any circumstances; provided however, that nothing in this Section 13 shall be interpreted to give any mortgage or other security instrument entered into by Landlord priority over any Approved Mortgagee's secured interest in the Tenant's leasehold estate.

Section 13.02 **Leasehold Mortgage Authorized.**

A. Subject to the foregoing and the other provisions contained herein, Tenant may mortgage, pledge, hypothecate or encumber (collectively "**Mortgage**") this Lease and enter into a Leasehold Mortgage upon a sale and assignment of the leasehold estate permitted by this Lease or may mortgage or otherwise encumber Tenant's leasehold estate for the benefit of an Approved Mortgagee, under one or more Leasehold Mortgages and assign this Lease as security for such Leasehold Mortgage or Leasehold Mortgages.

B. Any such Leasehold Mortgage shall be expressly subordinate to Landlord's interest in this Lease and the Leased Premises, and that anyone claiming by or through Tenant shall be so subordinate and shall have no recourse against Landlord. Because Tenant will hold no interest in the fee interest in the Leased Premises or Leasehold Improvements, Tenant shall not have the right to encumber the fee interest of Landlord in the Leased Premises, Leasehold Improvements, or the reversion of Landlord or rentals due Landlord, and as such Approved Mortgagee shall not acquire any greater interest in the Leased Premises than Tenant has under this Lease.

C. The transfer or assignment of the leasehold estate of Tenant under this Lease pursuant to any foreclosure (judicial or otherwise) by any Approved Mortgagee or any deed or assignment in lieu of foreclosure or the disposition of the leasehold estate by the holder of such Leasehold Mortgage shall only be to an entity that shall operate the Leased Premises for the Permitted Uses, but subject to the provisions of Section 16.01(A)(v).

Section 13.03 **Notice to Landlord.**

A. If Tenant shall, on one or more occasions, mortgage Tenant's leasehold estate to an Approved Mortgagee, and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage, and the name and address of the Leasehold Mortgagee, Landlord and Tenant agree that,

following receipt of such notice by Landlord, the provisions of this Section 13 shall apply with respect to each such Leasehold Mortgage.

B. Landlord shall promptly, upon receipt of a communication purporting to constitute the notice as required by Section 13.03A, acknowledge by an instrument in recordable form receipt of such communication or, in the alternative, notify the Tenant and the Approved Mortgagee of the rejection of such communication as not conforming with the provisions of Section 13.03A, and specify the specific basis of such rejection; provided, however, that the failure of the Landlord to acknowledge such notice shall not be a condition to the effectiveness of such notice provided that the notice is given in accordance with the terms of this Lease.

C. After Landlord has received the notice provided for by Section 13.03A, Tenant shall, with reasonable promptness, provide Landlord with copies of any recorded documents pertinent to the Leasehold Mortgage as specified by Landlord and not previously provided to the Landlord. Tenant shall, thereafter, also provide Landlord, from time to time, with a copy of each amendment or other modification or supplement to such documents. Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

D. In the event of any assignment of a Leasehold Mortgage by an Approved Mortgagee, or in the event of a change of address of an Approved Mortgagee, or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be promptly provided to Landlord pursuant to this Lease.

Section 13.04 Consent of Approved Mortgagee.

No termination, amendment, modification, cancellation or other surrender of this Lease shall be effective as to any Approved Mortgagee unless consented to in writing by such Approved Mortgagee. The foregoing shall not prevent the termination of the Lease in accordance with its terms; provided, however, that termination shall be subject to the rights and obligations of any Approved Mortgagee.

Section 13.05 Approved Mortgagee's Opportunity to Cure.

Landlord, upon providing Tenant any Notice of: (a) default under this Lease, or (b) an intended termination of this Lease, shall, at the same time, provide a copy of such Notice to every Approved Mortgagee. From and after the date on which such Notice has been given to an Approved Mortgagee, such Approved Mortgagee shall have the same period, after the giving of suchNotice upon it, for remedying any default or acts or omissions which are the subject matter of such Notice or causing the same to be remedied, as is given Tenant after the giving of such Notice to Tenant, plus in each instance, the additional periods of time specified in Sections 13.06 and 13.07 herein to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice at the instigation of such Approved Mortgagee as if the same had been done by Tenant. Landlord and Tenant do hereby authorize entry upon the Leased Premises by the Approved Mortgagee for such purpose.

Section 13.06 Termination Notice to Approved Mortgagee.

A. Anything contained in this Lease to the contrary notwithstanding, if any Default shall occur which entitles Landlord to terminate this Lease, Landlord shall not effectuate the termination of the Lease unless, following the expiration of Tenant's cure period for such Default, Landlord has delivered a copy of the Notice to Terminate to any Approved Mortgagee at least thirty (30) calendar days in advance of the proposed effective date of such termination. The provisions of Section 13.07 shall apply if, during such 30-day termination notice period, any Approved Mortgagee shall:

(i) Notify Landlord of such Approved Mortgagee's desire to cure the Tenant's default; and

(ii) Pay or cause to be paid all Rent, insurance premiums and other monetary obligations of Tenant then due in arrears as set forth in the Notice to Terminate to such Approved Mortgagee and/or which may become due during such 30 day period; and

(iii) Comply or in good faith and with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and which are reasonably susceptible of being complied with by such Approved Mortgagee; provided, however, that such Approved Mortgagee shall not be required at any time to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Leased Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgage.

B. Any notice to be given by Landlord to an Approved Mortgagee pursuant to any provision of this Lease shall be deemed properly addressed if sent to the Approved Mortgagee who served the notice unless notice of a change of Leasehold Mortgagee has been given to Landlord.

Section 13.07 Procedure on Default.

A. If Landlord shall elect to terminate this Lease by reason of a Default, the termination date for the Lease in the Notice to Terminate with respect to an Approved Mortgagee shall be extended for ten (10) calendar days from and after the proposed effective date of such termination set forth in Section 13.06 with respect to any default that is capable of being cured with the payment of money, and provided the Approved Mortgagee, acting in good faith and with reasonable diligence and continuity, promptly commences curing any non-monetary default of Tenant, for twelve (12) months from and after the proposed effective date of such termination set forth in Section 13.06 for all other defaults, provided that such Approved Mortgagee shall, during such ten (10) day or, twelve (12) month period, as applicable (provided, however, that such twelve (12) month period shall be extended day for day if cure within such period is not possible and Tenant or Permitted Mortgagee or either of their successors or assigns are diligently attempting to prosecute such cure to completion; provided, however, in no event shall such twelve (12) month period be extended for more than an additional three (3) more months):

(i) pay or cause to be paid, the Rent, insurance premiums and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Premises junior in priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee and (B) past nonmonetary obligations then in default and not reasonably susceptible of being cured by the payment of money by such Approved Mortgagee;

(ii) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence provided that Landlord has not previously exercised its right to satisfy the obligations under the Leasehold Mortgage or purchase the leasehold estate prior to such foreclosure proceedings, as set forth in Section 13.01. Notwithstanding the foregoing, an Approved Mortgagee shall not be required to comply with the terms of this paragraph (b) if the Default is solely monetary and the Approved Mortgagee has cured such monetary default; and

(iii) comply or in good faith, with reasonable diligence and continuity, commence to comply and thereafter continue to comply with all nonmonetary requirements of this Lease then in default, and reasonably susceptible of being complied with by such Approved Mortgagee.

B. If at the end of such ten (10) day or twelve (12) month (or longer) period, as applicable set forth in Section 13.07 the Approved Mortgagee is not in compliance with Section 13.07, the Landlord may terminate this Lease.

C. If the Approved Mortgagee is in compliance with Section 13.07, and Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction from foreclosing or exercising any remedies under the Leasehold Mortgage, this Lease shall not then terminate and the time for completion of such Approved Mortgagee of its proceedings shall continue so long as such Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction, and shall not terminate thereafter provided that within the twelve (12) month (or longer) period commencing on the day the stay is lifted, Approved Mortgagee either reinstates the Tenant under the Leasehold Mortgage, executes a workout agreement with the Tenant, or proceeds to take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 13.07, however, shall be construed to extend this Lease beyond the Term thereof, or to require an Approved Mortgagee to continue such foreclosure or such other proceedings after the Default has been cured. If all Default shall be cured during any such extended period set forth in herein and the Approved Mortgagee shall discontinue such foreclosure proceedings or other proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

D. If an Approved Mortgagee is in compliance with Section 13.07, upon the acquisition of the leasehold estate herein by such Approved Mortgagee or its designee, or any other purchaser at a foreclosure sale, or otherwise and upon the discharge of any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Premises which is junior in

priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee, if so required by Law, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided however, that as a condition precedent to such continuation of this Lease, (a) such Approved Mortgagee or its designee, or any other purchaser or assignee at a foreclosure sale or deed in lieu of foreclosure shall cure any and all existing Defaults in accordance with the provisions of Section 13.07 upon the acquisition of the leasehold estate and use the Leased Premises only for Permitted Uses.

E. For the purposes of this Section, any Approved Mortgagee, as such, shall not be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Approved Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. However, in the event of any sale of this Lease, and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or any assignment or transfer of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, any assignee or transferee under this Section, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is Tenant of the leasehold estate.

F. Any Leasehold Mortgagee or other entity in possession of Tenant's interest under the Leasehold Mortgage pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, without the consent of Landlord, sell, transfer or assign its Leasehold Mortgage to either an Institutional Lender or a non-Institutional Lender reasonably acceptable to Landlord, on such terms and conditions as determined in its sole and absolute discretion.

Section 13.08 No Merger.

So long as any Leasehold Mortgage is in existence, unless all Approved Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased Premises and the leasehold estate of Tenant therein created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant, or by a third party, by purchase or otherwise.

Section 13.09 Requests for Lease Modification.

In connection with Tenant obtaining or renewing a Leasehold Mortgage, if the Leasehold Mortgagee shall request modifications of this Lease as a condition of such Leasehold Mortgage (or any amendment, extension or modification thereof), Landlord shall agree to review and consider such modifications. Notwithstanding the foregoing, Landlord's approval of any such modification and the terms thereof shall be at Landlord's sole and absolute discretion.

Section 13.10 Institutional Lender.

A. **"Institutional Lender"** means a lender or equity investor in real estate that is not a Prohibited Person but is: (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own

account, (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company, (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(xi) hereof, (iv) a public employees' pension or retirement system, (v) a pension, retirement, or profit sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent, (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit or securitization trust or similar investment entity, (vii) any federal, state, or District of Columbia agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds, (viii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1,000,000,000.00 in assets; (ix) any entity of any kind actively engaged in commercial real estate financing (including without limitation, affordable housing financing) and having total assets (on the date when its interest in the Leased Premises or Leasehold Improvements, or any portion thereof, is obtained) of at least $30,000,000.00, (x) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing entities described in clauses (i)-(ix) when acting as trustee or manager for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders) or (xi) such other lender or equity investor which at the time of making the investment is of a type which may customarily be utilized as an investor or lender on projects like the portion of the Leased Premises or Leasehold Improvements upon which such financing is placed. Landlord agrees that any lender or lenders making a debt/or equity investment to finance Tenant or the proposed renovations to the Leased Premises under the Historic Preservation Tax Credit Program, and affiliates thereof, shall each qualify as an Institutional Lender.

B. **"Prohibited Person"** means 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 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: (i) 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); (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, *et seq.*, as amended; and (iii) 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.

ARTICLE XIV.

SUBORDINATION AND ATTORNMENT

Section 14.01 Subordination.

A. Tenant's rights under this Lease are subordinate to: (i) any existing leases affecting all or any part of the Leased Premises as of the date of this Lease; and (ii) any mortgage, deed of trust or other security instrument affecting the Leased Premises as of the date of this Lease (those documents referred to in (i) and (ii) above being collectively referred to as a "**Mortgage**" and the Person or Persons having the benefit of same being collectively referred to as a "**Mortgagee**"). Tenant's subordination provided in this Section 14.01 is self-operative and no further instrument of subordination shall be required. Notwithstanding the foregoing, Tenant shall, within five (5) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination of this Lease to any Mortgage. In addition, any Mortgagee may, at its option, unilaterally subordinate its Mortgage to this Lease. Notwithstanding anything to the contrary contained herein, Landlord hereby represents and warrants, to the best of its actual knowledge, that as of the date of this Lease, there is no existing lease affecting all or any part of the Leased Premises which is not recorded in the public record. Furthermore, Tenant agrees that this Lease shall be subordinate to any future mortgage or deed of trust placed against the Leased Premises by Landlord, and that it will attorn to the future Mortgagee, upon termination of the ground lease or foreclosure of the mortgage or deed of trust respectively only, provided that the foregoing agreement of tTenant to subordinate is expressly subject to such Mortgagee agreeing to honor and abide by the terms of the Lease and give Tenant a non-disturbance agreement or recognition agreement in a form and substance mutually acceptable to the Parties.

Section 14.02 Attornment.

Subject to the provisions of Section 14.01 above, if any Person succeeds to all or part of Landlord's interest in the Leased Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise (such Person herein referred to as, "**Successor Landlord**"), on written request by Successor Landlord, Tenant shall, without charge, attorn to such Successor Landlord provided such Successor Landlord agrees in writing to honor and abide by the terms of this Lease, and this Lease shall continue in accordance with its terms as a lease between Successor Landlord and Tenant.

Section 14.03 Estoppel Certificate.

Each of Landlord and Tenant, within twenty (20) days after receiving notice from, and without charge or cost to the other, shall certify to the other or any other Person designated by Landlord or Tenant: (i) that this Lease is in full force and effect and unmodified (or if modified,

stating the modification); (ii) the dates, if any, to which each component of the Rent due under this Lease has been paid; (iii) whether, to such party's actual knowledge, Landlord or Tenant has failed to perform any covenant, term or condition under this Lease, and the nature of Landlord's or Tenant's failure, if any; and (iv) such other relevant information as Landlord or Tenant may request.

Section 14.04 Quiet Enjoyment.

Landlord covenants that it has full right, power and authority to enter into this Lease and agrees that Tenant, upon faithfully and timely performing all of Tenant's obligations under this Lease and timely paying all Rent, shall peaceably and quietly have, hold and enjoy the Leased Premises during the Term, subject, however, to all encumbrances, easements, and matters of record to which this Lease is or may become subject.

ARTICLE XV.

ASSIGNMENT AND SUBLETTING

Section 15.01 Landlord's Consent Required.

A. Except as otherwise provided herein, Tenant shall not assign, transfer or mortgage any or all of Tenant's rights or interests under the Lease or sublease all of the Leased Premises (a "**Transfer**", and the person or entity to which the Transfer is made is hereinafter referred to as a "**Transferee**") without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion in the event that the proposed transferee does not have past experience in owning and operating properties utilizing the Primary Permitted Uses, and does not have a net worth equal to or greater than Tenant; provided, however, that Tenant may, upon Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, Transfer the Lease to: (i) any other entity that will use the Premises for galleries to showcase contemporary art in rotating exhibits open to the public and other Primary Permitted Uses; (ii) a subsidiary, affiliate, parent or other entity which Tenant controls, is controlled by, or is under common control with, Tenant; (iii) a successor entity to Tenant resulting from merger, consolidation, non-bankruptcy reorganization, or government action; or (iv) a purchaser of all or any significant portion of Tenant's ownership interests or assets. Notwithstanding the foregoing, in no event shall Landlord's consent be required in connection with any Transfer to an Approved Mortgagee. Subleases not involving a Transfer shall be subject to the prior approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Any Transfer without Landlord's consent shall not be binding upon Landlord, and shall confer no rights upon any third Person. Each such unpermitted Transfer shall constitute a Default by Tenant under this Lease, subject to the provisions of Article XVI. The acceptance by Landlord of the payment of Rent following any Transfer prohibited by this Article XV shall not be deemed to be a consent by

Landlord to any such Transfer, an acceptance of the Transferee as a tenant, a release of Tenant from the performance of any covenants herein contained, or a waiver by Landlord of any remedy of Landlord under this Lease, although amounts actually received shall be credited by Landlord against Tenant's Rent obligations. Consent by Landlord to any one Transfer shall not constitute a waiver of the requirement for Landlord's consent to any other Transfer. No reference in this Lease to assignees, subtenants or licensees shall be deemed to be consent by Landlord to the occupancy of the Leased Premises by any such assignee, subtenant or licensee.

B. Landlord's consent to any Transfer shall not operate as a waiver of, or release of Tenant from, Tenant's covenants and obligations hereunder, nor shall the collection or acceptance of Rent or other performance from any Transferee have such effect, except to the extent specifically agreed to in writing by the Parties. Rather, Tenant shall remain fully and primarily liable and obligated under this Lease for the entire Term in the event of any Transfer, and in the event of a Default by the Transferee, Landlord shall be free to pursue Tenant, the Transferee, or both, without prior notice or demand to either, except to the extent otherwise specifically agreed to in writing by the Parties.

C. Notwithstanding anything to the contrary contained herein, Tenant shall have the right without Landlord's consent to grant a security interest in its leasehold estate under the Lease to an Approved Mortgagee or an Affiliate of Tenant.

D. Notwithstanding the foregoing, the following conditions shall apply to any proposed Transfer:

(i) Each and every covenant, condition, or obligation imposed upon Tenant by this Lease and each and every right, remedy, or benefit afforded Landlord by this Lease shall not be impaired or diminished as a result of such Transfer;

(ii) Transferee with respect to an assignment of the Lease must expressly assume in a written instrument delivered and reasonably acceptable to Landlord all the obligations of Tenant under the Lease and with respect to any sublease, the terms of the such sublease shall be subordinate to the terms and provisions of this Lease; and

(iii) At least thirty (30) days prior to the effective date of such proposed Transfer, or such shorter period of time as reasonably agreed upon by the Parties, Landlord shall receive the following information in connection with such Transfer: the name of the proposed Transferee, a copy of the financial statement of the proposed Transferee and any guarantor of the Lease, a copy of the proposed Transfer document or agreement, and information regarding the proposed Transferee's business history and experience.

ARTICLE XVI.

DEFAULT AND REMEDIES

Section 16.01 **Tenant Default.**

A. Each of the following events shall constitute a default ("**Default**") by Tenant under this Lease:

(i) Failure by Tenant to pay, or cause to be paid, any installment of Rent, Taxes, insurance premiums or other sums of money stipulated in this Lease to be paid by Tenant, if such failure shall continue for a period of thirty (30) calendar days after written notice thereof has been timely delivered by Landlord to Tenant;

(ii) Failure by Tenant to perform or observe any of the non-monetary terms, covenants, conditions, agreements and provisions of this Lease stipulated in this Lease to be observed and performed by Tenant if such failure shall continue for a period of thirty (30) calendar days after notice thereof by Landlord to Tenant; provided, however, that if any such failure cannot reasonably be cured within such thirty (30) day period, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession of the Leased Premises pursuant to this Section 16.01 for so long as Tenant commences and in good faith and with due diligence pursues to remedy and correct such failure within such thirty (30) day period and completes such cure within ninety (90) calendar days from receipt of notice;

(iii) Tenant vacates, abandons or ceases to continuously operate the Leased Premises as required by the terms of this Lease;

(iv) Failure of Tenant to observe or perform according to the provisions of Article XIV of this Lease, and such failure is not cured within ten (10) Business Days after Tenant's receipt of notice thereof; or

(v) Failure of Tenant or any party by, through or under Tenant to use the Leased Premises for Permitted Uses. Notwithstanding the forgoing, an Approved Mortgagee or a subsidiary or designee thereof or other third party in possession who has foreclosed upon the Leasehold Mortgage pursuant to the terms of this Lease and comes into possession of the Property (a "**Mortgagee in Possession**") shall commence using the Leased Premises for the Permitted Uses within two (2) years of the date of its possession of the Leased Premises (the "**Date of Possession**"). Not later than the date (the "**Binding Lease Date**") that is twelve (12) months of the Date of Possession, such Mortgagee in Possession shall enter into a binding written agreement with a proposed tenant capable of satisfying the Permitted Uses requirement, and such tenant shall occupy the Leased Premises and be open and operating for the Permitted Uses within twelve (12) months of the Binding Lease Date.

Section 16.02 **Remedies and Damages.**

A. Upon the occurrence of any Default, Landlord, without any notice or demand whatsoever, shall have all the rights and remedies provided in this Section 16.02, in addition to all other rights and remedies available under this Lease or provided at law or in equity.

B. Upon the occurrence of any Default Landlord may, upon notice to Tenant, terminate this Lease, or terminate Tenant's right to possession of the Leased Premises without terminating this Lease (as Landlord may elect). If the Lease or Tenant's right to possession under this Lease are at any time terminated under this Section, or otherwise, Tenant shall immediately surrender and deliver the Leased Premises peaceably to Landlord. If Tenant fails to do so, Landlord shall be entitled to re-enter in accordance with all applicable Laws, without process and without notice (any notice to quit or of re-entry being hereby expressly waived), using such force as may be reasonably necessary; and, alternatively, shall be entitled to the benefit of all provisions of law respecting the speedy recovery of possession of the Leased Premises (whether by summary proceedings or otherwise) any notice to quit or of re-entry being expressly waived.

C. Upon the occurrence of any Default, Landlord may also perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant fails to perform, the cost of which shall be paid by Tenant to Landlord upon demand. In performing any obligations of Tenant, Landlord shall incur no liability for any loss or damage that may accrue to Tenant, the Leased Premises or Tenant's Property by reason thereof, except if caused by Landlord's willful, wanton and malicious act. The performance by Landlord of any such obligation shall not constitute a release or waiver of any of Tenant's obligations under this Lease.

D. Upon termination of this Lease or of Tenant's right to possession under this Lease, Landlord may at any time and from time to time relet all or any part of the Leased Premises for the account of Tenant or otherwise, at such rentals and upon such terms and conditions as Landlord shall deem appropriate. In the event that Landlord shall relet the Leased Premises, then rentals received by Landlord from such reletting shall be applied: first, to the payment of such reasonable expenses as Landlord may incur in recovering possession of the Leased Premises, including reasonable legal expenses and attorneys' fees, in placing the Leased Premises in good order and condition and in preparing or altering the same for re-rental; second, to the payment of such reasonable expenses, commissions and charges as may be incurred by or on behalf of Landlord in connection with the reletting of the Leased Premises; and third, to the fulfillment of the covenants of Tenant under the Lease, including the various covenants to pay Rent. Any reletting by Landlord shall not be construed as an election by Landlord to terminate this Lease unless notice of such intention is given by Landlord to Tenant. Notwithstanding any reletting without termination of this Lease, Landlord may at any time thereafter elect to terminate this Lease. Landlord shall use reasonable efforts to relet or otherwise use the Leased Premises to mitigate the damages hereunder. In any event, Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Leased Premises or any failure by Landlord to collect any sums due upon such reletting.

E. If this Lease, or Tenant's right to possession of the Leased Premises, is terminated by Landlord pursuant to the provisions of this Section, Tenant nevertheless shall remain liable to Landlord for (a) any Rent, damages or other sums which may be due or sustained prior to such termination, (b) all reasonable costs, fees and expenses (including attorneys' fees, brokerage commissions, advertising costs, and expenses incurred in placing the Leased Premises

in rentable condition) incurred by Landlord in pursuit of its remedies hereunder and in renting the Leased Premises to others from time to time, but costs of reletting shall be discounted based on the number of years remaining in the Term hereof ,(c) an amount equal to the Rent which would have become due from the date of such termination through the expiration of the Term (or what would have been the expiration of the Term but for any termination thereof), less the net avails of reletting, if any, which Landlord receives during such period from others to whom the Leased Premises may be rented, which amount shall be due and payable by Tenant to Landlord on the dates such Rent and other sums above specified are due under the Lease. Any suit or action brought to collect any such damages for any month shall not in any manner prejudice the right of Landlord to collect any damages for any subsequent month by a similar proceeding.

Section 16.03 **Limitation on Right of Recovery Against Landlord or Tenant.**

Except as otherwise provided in Section 17.22, no director, officer, employee, representative or agent of Landlord or Tenant shall be personally liable in respect of any covenant, condition or provision of this Lease nor shall Landlord or Tenant be liable to the other Party for any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the Leased Premises suffered by such Party. If Landlord breaches or defaults in any of its obligations in this Lease, Tenant shall look solely to the equity of Landlord in the Leased Premises for satisfaction of Tenant's remedies. If Tenant breaches or defaults in any of its obligations in this Lease, Landlord shall look solely to the assets of Tenant for satisfaction of Landlord's remedies.

Section 16.04 **Remedies Cumulative.**

No reference to any specific right or remedy in this Lease shall preclude Landlord from exercising any other right, from having any other remedy, or from maintaining any action to which it may otherwise be entitled under this Lease, at law or in equity.

Section 16.05 **Waiver.**

A. Neither Party to this Lease shall be deemed to have waived any provision of this Lease, or the breach of any such provision, unless specifically waived by such Party in a writing executed by an authorized officer of such Party. No waiver of a breach shall be deemed to be a waiver of any subsequent breach of the same provision, or of the provision itself, or of any other provision.

B. Tenant hereby expressly waives any and all rights of redemption and any and all rights to relief from forfeiture which would otherwise be granted or available to Tenant.

C. **IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE DISTRICT OF COLUMBIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY DISTRICT OF COLUMBIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR**

SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF ANNUAL BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

Section 16.06 **Interest.**

If (i) Tenant fails to make any payment under this Lease by that date which is ten (10) days after such payment is due, (ii) Landlord performs any obligation of Tenant under this Lease (after providing written notice of Landlord's intention to perform such obligation and a reasonable period of time is afforded to Tenant to perform such obligation), or (iii) Landlord incurs any costs or expenses as a result of Tenant's Default under this Lease, then Tenant shall pay, upon demand, Interest from the date such payment was due or from the date Landlord incurs such costs or expenses relating to the performance of any such obligation or Tenant's Default.

Section 16.07 **Legal Expenses.**

A. If Landlord institutes any suit against Tenant in connection with the enforcement of Landlord's rights under this Lease, the violation of any term of this Lease, the declaration of Landlord's rights hereunder, or the protection of Landlord's interest under this Lease, and Landlord prevails in such suit, then Tenant shall reimburse Landlord for its reasonable expenses incurred as a result thereof including court costs and reasonable attorneys' fees. Notwithstanding the foregoing, if Landlord files any legal action for collection of Rent or any eviction proceedings, whether summary or otherwise, for the non-payment of Rent, and Tenant pays such Rent prior to the rendering of any judgment, then Landlord shall be entitled to collect, and Tenant shall pay, all court filing fees and the reasonable fees of Landlord's attorneys.

B. Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Lease, in the event Landlord is represented by the Office of the Attorney General for the District of Columbia ("**OAG**"), 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 OAG prepared for or participated in any such litigation. In the event the Laffey Matrix is no longer utilized by OAG, reasonable attorney's fees shall be calculated based on an equivalent amount that a private firm of comparable size to OAG in the Washington D.C. area would have charged for such representation based on the number of hours OAG staff participate in any such litigation.

ARTICLE XVII.

MISCELLANEOUS PROVISIONS

Section 17.01 Notices.

A. Whenever any demand, request, approval, consent or notice (singularly and collectively, "**Notice**") shall or may be given by one Party to the other, such Notice shall be in writing and addressed to the Parties at their respective addresses as set forth in Section 1.01 and served by (i) hand; (ii) a nationally recognized overnight express courier; or (iii) registered or certified mail return receipt requested. The date the Notice is received shall be the date of service of Notice. If an addressee refuses to accept delivery, however, then such Notice shall be deemed to have been served on either (i) the date hand delivery is refused, or (ii) the next business day after the Notice was sent in the case of attempted delivery by overnight courier. Either Party may, at any time, change its Notice address by giving the other Party Notice, in accordance with the above, stating the change and setting forth the new address.

B. If any Mortgagee shall notify Tenant that it is the holder of a Mortgage affecting the Leased Premises, no Notice thereafter sent by Tenant to Landlord shall be effective unless and until a copy of the same shall also be sent to such Mortgagee, in the manner prescribed in this Section 17.01, to the address as such Mortgagee shall designate.

Section 17.02 Recording.

Landlord agrees Tenant may record at its sole cost and expense a memorandum of this Lease in form and substance mutually satisfactory to the Parties hereto, provided Tenant at its sole cost and expense records a release of the memorandum upon the expiration or earlier termination of the Lease. This provision shall survive the termination of the Lease.

Section 17.03 Successors and Assigns.

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord and Tenant, and their respective permitted successors and assigns. Upon any sale or other transfer by Landlord of its interest in the Leased Premises, to the extent agreed upon in writing between Landlord and its transferee, Landlord shall be relieved of its obligations under this Lease occurring subsequent to such sale or other transfer, provided that the transferee agrees in writing to be bound by all terms and conditions hereof.

Section 17.04 Anti-Deficiency.

The obligations of the District of Columbia to fulfill financial obligations pursuant to this Lease, or any subsequent agreement entered into pursuant to this Lease or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349–1351, 1511–1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1–206.03(e) and 47–105 (2001); (ii) the District of Columbia

Anti-Deficiency Act, D.C. Official Code §§ 47–355.01 to .08 (2004 Supp.) (the "**D.C. ADA**") and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1–204.46 (2001).

Section 17.05 **Entire Agreement; No Representations; Modification.**

This Lease is intended by the Parties to be a final expression of their agreement and as a complete and exclusive statement of the terms thereof. All prior negotiations, considerations and representations between the Parties (oral or written) are incorporated herein. No course of prior dealings between the Parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. No representations, understandings, agreements, warranties or promises with respect to the Leased Premises or the Building of which they are a part, or with respect to past, present or future tenancies, rents, expenses, operations, or any other matter, have been made or relied upon in the making of this Lease, other than those specifically set forth herein. This Lease may only be modified, or a term thereof waived, by a writing signed by an authorized officer of Landlord and Tenant expressly setting forth said modification or waiver.

Section 17.06 **Severability.**

If any term or provision of this Lease, or the application thereof to any Person or circumstance, shall be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 17.07 Joint and Several Liability.

If two or more Persons shall sign this Lease as Tenant, the liability of each such Person to pay the Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all Notices, payments and agreements given or made by, with or to any one of such Persons shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other legal entity, the partners or members of which are, by virtue of any Law, subject to personal liability, the liability of each such partner or member under this Lease shall be joint and several and each such partner or member shall be fully obligated hereunder and bound hereby as if each such partner or member had personally signed this Lease.

Section 17.08 Broker's Commission.

Tenant warrants and represents to Landlord that no broker, finder or agent has acted for or on its behalf in connection with the negotiation, execution or procurement of this Lease. Tenant agrees to indemnify and hold Landlord harmless from and against all liabilities, obligations and damages arising, directly or indirectly, out of or in connection with a claim from a broker, finder or agent with respect to this Lease or the negotiation thereof, including actual costs and reasonable attorneys' fees incurred in the defense of any claim made by a broker alleging to have performed services on behalf Tenant. Landlord warrants and represents to Tenant that no broker, finder or agent has acted for or on its behalf in connection with the negotiation, execution or procurement of this Lease.

Section 17.09 Irrevocable Offer, No Option.

The submission of this Lease by Landlord to Tenant or by Tenant to Landlord for examination shall not constitute an offer to lease or a reservation of or option for the Leased Premises. Tenant's execution of this Lease shall be deemed an offer by Tenant, but this Lease shall become effective only upon execution thereof by both Parties and delivery thereof to Tenant. Execution of this Lease or any other agreement between the Parties may be subject to authorization by the Council of the District of Columbia pursuant to § 451 of the District Charter (D.C. Official Code § 1-204.51 (2001)) and/or D.C. Official Code § 10-801 (2001), each as applicable ("**Council Approval**").

Section 17.10 Inability to Perform.

Except for the payment of monetary obligations, if Landlord or Tenant is delayed or prevented from performing any of its obligations under this Lease by reason of acts of God, strike, labor troubles, or any similar cause whatsoever beyond their control, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by Landlord or Tenant.

Section 17.11 Survival.

Occurrence of the Termination Date shall not relieve Tenant from its obligations accruing prior to the expiration of the Term to the extent specified by the provisions of this Lease. All such obligations shall survive termination of the Lease to the extent specified in this Lease.

Section 17.12 Tenant's Representations.

A. Tenant hereby represents and warrants to Landlord as follows:

(i) Tenant (a) is a non-profit limited liability company duly organized, validly existing and in good standing under the laws of District of Columbia; (b) Tenant is duly qualified to conduct business in the District of Columbia; and (b) Tenant has the power and authority to conduct the business in which it is currently engaged;

(ii) Tenant (a) has the power and authority to execute, deliver and perform its obligations under this Lease, and (b) has taken all necessary action to authorize the execution, delivery and performance of this Lease;

(iii) No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained is required in connection with the execution, delivery and performance of this Lease by Tenant, except for: (a) zoning approvals, if any; and (b) permits and approvals from Governmental Authorities required to construct the Improvements;

(iv) This Lease has been duly executed and delivered by Tenant, and constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms;

(v) The execution, delivery and performance by Tenant of this Lease will not violate any Laws or result in a breach of any contractual obligation to which Tenant is a party;

(vi) Tenant's execution, delivery and performance of this Lease and the transactions contemplated hereby shall not: (a) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Tenant; or (b) result in a breach or default under any provision of the organizational documents of Tenant; and

(vii) No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to Tenant's actual knowledge, threatened by or against Tenant which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Tenant and its ability to perform its obligations under this Lease.

Section 17.13 **Construction of Certain Terms.**

The term "**including**" shall mean in all cases "**including without limitation.**" Wherever Tenant or Landlord is required to perform any act hereunder, such Party shall do so at its sole cost and expense, unless expressly provided otherwise. All payments to Landlord, other than Annual Base Rent, whether as reimbursement or otherwise, shall be deemed to be Additional Rent, regardless whether denominated "as **Additional Rent**." The term "**days**' shall mean calendar days unless Business Days are specifically referenced.

Section 17.14 **Showing of Leased Premises.**

Landlord may enter upon the Leased Premises during normal business hours on Business Days, upon at least twenty-four (24) hours prior written notice to Tenant for purposes of showing the Leased Premises to tenants during the last twelve (12) months of the Term.

Section 17.15 **Relationship of Parties.**

This Lease shall not create any relationship between the Parties other than that of Landlord and Tenant.

Section 17.16 **Rule Against Perpetuities.**

If Landlord fails to deliver the Leased Premises to Tenant within five (5) years from the date of this Lease, this Lease shall automatically terminate at the end of such period.

Section 17.17 **Choice of Law.**

This Lease shall be construed, and all disputes, claims, and questions arising hereunder shall be determined, in accordance with the laws of the District of Columbia.

Section 17.18 **Choice of Forum.**

Any action involving a dispute relating in any manner to the Lease, the relationship of Landlord/Tenant, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in the District of Columbia or any applicable federal courts of the jurisdiction in which the Leased Premises are located.

Section 17.19 **Time is of the Essence.**

Time is of the essence with respect to each and every obligation arising under this Lease.

Section 17.20 **False Claims.**

Notwithstanding anything to the contrary in this Lease, and without limitation of any kind, all demands for payment or reimbursement of any kind under this Lease made by Tenant, if any, shall be subject to D.C. Official Code §§ 2-308.13 - 2-308.19 (2001) and the remedies available thereunder.

Section 17.21 Hazardous Materials.

A. Except for (i) ordinary and general office supplies typically used in the ordinary course of business, such as copier toner, liquid paper, glue and ink, and common household cleaning materials, and (ii) products which are necessary and customary in the conduct of Tenant's business in accordance with Tenant's Permitted Uses, all of which shall be stored, used and disposed of in accordance with all Hazardous Material Laws, Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of, on, in, under or about the Leased Premises, by Tenant, its agents, employees, subtenants, assignees, contractors or invitees. Tenant shall not discharge Hazardous Materials or wastes into or through any sanitary sewer serving the Leased Premises.

B. Tenant shall promptly notify Landlord in writing (and provide Landlord with copies) when (and if) Tenant first becomes aware or receives notice of any proceedings, actions, claims, notices, demands, reports or asserted violations arising out of or in connection with the presence of Hazardous Materials, or any actual or alleged violations of any Hazardous Material Laws, at, on, under or near the Leased Premises.

C. In the event Hazardous Materials are discovered in, under or about the Leased Premises at any time due to any act or omission of Tenant (its agents, employees or contractors) which is (a) negligent, (b) unlawful, or (c) in violation of Tenant's obligations pursuant to the Lease, Tenant shall promptly, at its sole risk and expense, commence to perform, and diligently prosecute to completion, all work necessary or required to remove, treat, dispose of and clean up the Hazardous Materials and return the Leased Premises to the condition existing prior to the contamination by the Hazardous Materials. All such remediation shall be approved by Landlord and shall be performed to its satisfaction in accordance with all Hazardous Materials Laws.

D. Tenant shall defend, indemnify and hold harmless Landlord's Indemnitees, its successors and assigns, from and against any and all liabilities, actions, demands, penalties, losses, costs and expenses (including reasonable attorneys' fees, consultants' fees and remedial costs), suits, costs of any settlement or judgment and claims which may be paid, incurred or suffered by or asserted against any of Landlord's Indemnitees, its successors and assigns, as a result of the presence on or under the Leased Premises of Hazardous Materials, or the Release of Hazardous Materials, which such presence or Release is due to (a) any act or omission of Tenant (its agents, employees, contractors or invitees) or (b) in violation of Tenant's obligations pursuant to the Lease. Notwithstanding the foregoing, or anything to contrary contained elsewhere in this Lease, the foregoing indemnification shall not include the presence or Release of any Hazardous Materials in, on or under the Leased Premises prior to the Lease Commencement Date, unless due to a Tenant Release.

E. The term "**Tenant Release**" shall mean the Release of a Hazardous Materials to the extent caused by Tenant, its agents, contractors, subcontractors or employees in, at or under the Leased Premises after the Lease Commencement Date.

F. The term "**Release**" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a

Hazardous Materials, regardless of whether such event is the result of an intentional or unintentional act or omission.

G. Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Lease, Tenant, at Tenant's sole cost and expense, shall comply with all environmental laws applicable to the Premises and shall perform all investigations, removal, remedial actions, cleanup and abatement, or other remediation that may be required pursuant any environmental laws, and Landlord shall have no responsibility or liability with respect thereto except to the extent caused by the negligence or willful misconduct of Landlord after the Lease Commencement Date or to the extent Landlord, as the owner of the Premises, is otherwise required to correct, remediate, remove, abate or take corrective action; provided, however, Tenant, at Tenant's sole cost and expense, shall be responsible for removing or abating any asbestos, or asbestos containing materials. The costs and expenses associated with the removal or cleanup of any pre-existing hazardous substances required by Laws to be removed or neutralized (including, but not limited to, removing or abating any asbestos or asbestos containing materials) shall be a part of Tenant's Construction Costs (as defined herein).

Section 17.22 **First Source and CBE.**

A. Tenant shall enter into a "**Certified Business Enterprise**" agreement with the District of Columbia governing the obligations of Tenant under the Small, Local and Disadvantaged Business Enterprise Development and Assistant Act of 2005 (D.C. Law 16-33; D.C, Official Code Section 2-218.01 et seq.) within thirty (30) days from the Lease Commencement Date, if such agreement has not been entered into prior to the Date of the Lease.

B. Tenant shall enter into a "**First Source Agreement**" with the District of Columbia governing the obligations of Tenant under the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code Section 2-219.03) within thirty (30) days from the Lease Commencement Date, if such First Source Agreement has not been entered into prior to the Date of the Lease.

Section 17.23 **Nondiscrimination Covenants.**

A. Tenant shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Laws, or court order, in the sale, lease, or rental or in the use or occupancy of the Leased Premises.

B. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Laws or court order.

C. Tenant will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment

advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Tenant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the District of Columbia or any agency thereof setting forth the provisions of this non-discrimination clause.

D. Tenant will, in all solicitations or advertisements for potential employees placed by or on behalf of Tenant, include the federal U.S. Equal Employment Opportunity Commission's logotype, statement, or slogan as a means of educating the public that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other Laws or court order.

[SIGNATURE PAGES FOLLOW]

N WITNESS WHEREOF, the Parties hereto intending to be legally bound hereby have executed this Lease under their respective hands and seals as of the day and year first above written.

LANDLORD:

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Depurty Mayor for Planning and Economic Development

By: _____
Name: _____
Title: Deputy Mayor for Planning and Economic Development

Approved For Legal Sufficiency
For the District of Columbia
By the Office of the Attorney General
For the District of Columbia:

Date:_____

By:_____
Assistant Attorney General

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

TENANT:

DevICE, LLC, a District of Columbia limited liability company

By: IDEARTS, LLC, a District of Columbia limited liability company, Member

By:_____
Name:_____
Title: _____

By: EastBanc, Inc, a District of Columbia corporation, Member

By:_____
Name:_____
Title:_____

[EXHIBIT PAGES FOLLOW]

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

(Attached)

EXHIBIT B

Depiction of Leased Premises

(Attached)

EXHIBIT C

TENANT WORK, INCLUDING THE SCOPE, THE SCHEDULE AND THE BUDGET

[Attached]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
ACTING DIRECTOR

August 6, 2014

Steven A. Siegel
President
Davey Street Partners, LLC
3121 Adams Mill Road, NW
Washington, DC 20010

Dear Mr. Siegel:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and DevICE, LLC. Under the terms of the Agreement, you are required to use DOES as the first source to fill all new jobs created as a result of Project: Institute for Contemporary Expression DC. In addition, at least 51% of the newly created jobs must be filled by D.C. residents. Further, District residents registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project.

You should post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.dcnetworks.org. Please contact DeCarlo Washington at (202) 698-5772 to receive assistance with identifying qualified District residents for placement.

The First Source Program has implemented an electronic compliance database which will provide a more efficient way for employers to enter and track their monthly First Source data. If you have any questions regarding the Monthly Compliance Reporting Database, please contact DeCarlo Washington at (202) 698-5772.

Thank you for participating in the First Source Employment Agreement Program, and we are looking forward to working with you.

Sincerely,

Drew Hubbard
Associate Director
First Source Program

Enclosure

Government of the District of Columbia
FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: ICE-DC-FRANKLIN

Employer Name: DevICE, LLC

Project Contract Amount: $13,200,000

Employer Contract Award: $13,200,000

Project Name: Institute for Contemporary Expression -- DC

Project Address: 925 13th Street, NW Ward: 2

Nonprofit Organization with 50 Employees or Less: ☐ Yes ☒ No

This First Source Employment Agreement, in accordance with The First Source Employment Agreement Act of 1984 (codified in D.C. Official Code §§ 2-219.01 – 2.219.05), The Apprenticeship Requirements Amendment Act of 2004 (Codified in D.C. Official Code §§ 2-219.03 and 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as "DOES", and DevICE, LLC, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for all new jobs created by the Project. The Employer will hire 51% District of Columbia residents for all new jobs created by the Project, and 35 % of all apprenticeship hours be worked by DC residents employed by EMPLOYER in connection with the Project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

A. Subject to the terms and conditions set forth herein, the EMPLOYER will use DOES as its first source for the recruitment, referral and placement for jobs created by the Project.

B. The EMPLOYER will require all Project contractors with contracts totaling $100,000 or more, and Project subcontractors with subcontracts totaling $100,000 or more, to enter into a First Source Employment Agreement with DOES.

C. DOES will provide recruitment, referral and placement services to the EMPLOYER, which are subject to the limitations set out in this Agreement.

D. The participation of DOES in this Agreement will be carried out by the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by the Office of the Director, of DOES.

E. This Agreement will take effect when signed by the parties below and will be fully effective for the duration of the Project contract and any extensions or modification to the Project contract.

F. This Agreement will not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract for the Project.

G. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.

H. This Agreement includes apprentices as defined and as amended, in D.C. Law 2-156, D.C. Official Code §§ 32-1401- 1431.

I. The EMPLOYER, prime subcontractors and subcontractors who contract with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least $500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council; and this includes but is not limited to, any construction or renovation contract or subcontract signed as the result of, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more. In furtherance of the foregoing, the EMPLOYER shall enter into an agreement with its contractors, including the general contractor, that requires that such contractors and subcontractors for the Project participate, in apprenticeship programs for the Project that: (i) meet the standards set forth in Chapter 11 of Title 7 of the District of Columbia Municipal Regulations, and (ii) have an apprenticeship program registered with the District of Columbia's Apprenticeship Council.

II. RECRUITMENT

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected to be created on the Project, salary range, hiring dates, residency status, ward information, new hire justification and union requirements.

B. The Employer will post all job vacancies in the DOES' Virtual One-Stop (VOS) at **www.jobs.dc.gov** within five (5) days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank at (202) 698-6001.

C. The EMPLOYER will notify DOES, by way of the First Source Office of its Specific Need for new employees for the Project, within at least five (5) business days (Monday - Friday) upon Employers identification of the Specific Need. This must be done before using any other referral source. Specific Needs shall include, at a minimum, the number of employees needed by job title, qualifications, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce do not need to be referred to DOES for placement and referral. However, EMPLOYER shall notify DOES of such promotions.

E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, the names, residency status and ward information of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project.

III. REFERRAL

A. DOES will screen applicants and provide the EMPLOYER with a list of applicants according to the Notification of Specific Needs supplied by the EMPLOYER as set forth in Section II (B).

B. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer.

IV. PLACEMENT

A. The EMPLOYER will make all decisions on hiring new employees but will, in good faith, use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.

B. In the event that DOES is unable to refer qualified personnel meeting the Employer's established qualifications, within five (5) business days (Monday - Friday) from the date of notification, from the EMPLOYER , the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for all new jobs created by the Project.

C. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

A. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved

with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

A. All contracts, subcontracts or other forms of government-assistance less than $100,000.

B. Employment openings the contractor will fill with individuals already employed by the company.

C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.

D. Construction or renovation contracts or subcontracts in the District of Columbia totaling less than $500,000 are exempt from the requirements of Section I(H) and I(I) of the General Terms hereof.

E. Non-profit organization with 50 or less employees are exempt from the requirements.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.

2. Notify DOES within seven (7) business days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. DOES will monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate with the DOES monitoring and will submit a Contract Compliance Form to DOES monthly.

C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available to DOES, upon request, payroll and employment records for the review period indicated for the Project.

D. The Employer will provide DOES additional information upon request.

E. With the submission of the final request for payment from the District, the EMPLOYER shall.

1. Document in a report to DOES its compliance with the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents; or

2. Submit to DOES a request for a waiver of compliance of the requirement that 51% of the new employees hired by the EMPLOYER the Project be District residents which will include the following documentation:
   a. Documentation supporting EMPLOYERS good faith effort to comply;
   b. Referrals provided by DOES and other referral sources; and
   c. Advertisement of job openings listed with DOES and other referral sources.

I The DOES may waive the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents, if DOES finds that:

1. A good faith effort to comply is demonstrated by the EMPLOYER; or

2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area:

   The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manasas, Manasas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loundon, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or

4. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.

G. Willful breach of the First Source Employment Agreement by the EMPLOYER, failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the DOES through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER.

H. The parties acknowledge that the provisions of E and F of Article VIII apply only to First Source hiring.

I. Nonprofit organizations with 50 or less employees are exempt from the requirement that 51% of the new employees hired by the EMPLOYER on the Project be District residents.

J. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

K. The EMPLOYER's noncompliance with the provisions of this Agreement may result in termination.

IX. LOCAL, SMALL, DISADVANTAGES USINESS ENTERPRISE

A. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)? ☐ YES ☒ NO

If yes, certification number: N/A

X. APPRENTICESHIP PROGRAM

A. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council? ☐ YES ☒ NO

If yes, D.C. Apprenticeship Council Registration Number: N/A

XI. SUBCONTRACTOR

A. Is your firm a subcontractor on this project? ☐ YES ☒ NO
If yes, name of prime contractor:

Dated this 25th day of July 20 14

Signature Dept. of Employment Services

Signature of Employer

DevICE, LLC
Name of Company

1101 M Street LLC Suite 220 Washington DC 20037
Address

(202) 737-1000
Telephone

jrios@eastbanc.com
E-mail

EMPLOYMENT PLAN

NAME OF EMPLOYER: DevICE, LLC

ADDRESS OF EMPLOYER: 3307 M Street, LLC, Suite 200, Washington, DC 20007

TELEPHONE NUMBER: (202) 737-1000 FEDERAL IDENTIFICATION NO.: 47-1734243

CONTACT PERSON: Anthony Lanier TITLE: President

E-MAIL: jrios@eastbanc.com TYPE OF BUSINESS: Real Estate

DISTRICT CONTRACTING AGENCY: DMPED

CONTRACTING OFFICER: Reyna Alorro TELEPHONE NUMBER: 2027271692

TYPE OF PROJECT: Renovation CONTRACT AMOUNT: $13,200,000

EMPLOYER CONTRACT AMOUNT: $13,200,000

PROJECT START DATE: Sept. 1, 2016 PROJECT END DATE: Aug. 31, 2017

EMPLOYER START DATE: Sept. 1, 2016 EMPLOYER END DATE: Aug. 31, 2017

NEW JOB CREATION PROJECTIONS: Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	N/A SEE #9				
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

NAME OF EMPLOYEE	CURRENT DISTRICT RESIDENT √Please Check	WARD
Dani Levinas	☒	2
Anthony Lanier	☒	2
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JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the Project.

Employer will mandate that the general contractor will comply with all First Source requirements under the law.

ICE-DC is committed to working closely with the District of Columbia Office of Apprenticeship Information and Training to establish and create a mentoring and training program focused on teaching District residents about contemporary art, curatorial practice, and how to become an artist.

ICE-DC is committed to providing business and employment opportunities specifically to Ward 2 residents located within 1 mile of the Franklin School and will host outreach meetings during the design process to engage interested residents and business who would like to participate in the ICE-DC program and operation.

The restaurant space is anticipated to be occupied with a new restaurant concept and will provide internship opportunities for high school students and apprenticeship opportunities for those interested in pursuing a career in the culinary arts

CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT (this "Agreement") is made by and between the DISTRICT OF COLUMBIA (the "District"), a municipal corporation acting by and through the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT** ("DSLBD") and **DevICE, LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (the "Developer").

RECITALS

A. Pursuant to a Land Disposition and Development Agreement entered on ____ between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development, Developer intends to provide for the redevelopment of the Franklin School into the Institute of Contemporary Expression, a contemporary art and performance building, located at 925 13th Street NW, Washington, DC (the "Project").

B. Pursuant to the Land Disposition and Development Agreement, the Developer covenants that it has executed and will comply in all respects with this Agreement.

C. Capitalized terms not defined herein shall have the meaning assigned to them in the Land Disposition and Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and the Developer agree, as follows:

ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the "Act") (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a "CBE") in connection with the predevelopment and development phases of the Project, including, but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the adjusted development budget ("Adjusted Development Budget" or "Adjusted Budget") detailed in Attachment 1 (the "CBE Minimum Expenditure"). The Adjusted Development Budget is **$12,029,000**. The CBE Minimum Expenditure is therefore **$4,210,150**.

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District ("Expenditure Period"). If within three (3) years of the execution of this Agreement the

Developer has not achieved the CBE Minimum Expenditure and has not obtained a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

Section 1.3 Adjustments to the Total Development Budget or CBE Minimum Expenditure. If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure ("Adjustment"). The CBE Minimum Expenditure and Contingent Contributions (if applicable as defined herein) shall be automatically increased in the case of an increase or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of this Agreement and be provided to the Developer and ODCA.

Section 1.4 Capacity Building Incentives. Developer acknowledges that a priority of the District of Columbia is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises as defined in the Act (each a "DBE") in particular. Such incentives when earned by Developer will be applied by DSLBD to reduce Developer's CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) The Developer may devise a list of professional services, trade specialties, or other vocational areas in which CBEs either lack capacity, lack depth, or in which such firms traditionally do not participate as prime contractors in construction projects of this nature and size (each, a "Target Sector"), and submit the list to DSLBD for approval before or simultaneously with the execution of this Agreement. CBEs identified on the list shall not be eligible for a bonus, as described in paragraphs (1) and (2) below ("Reporting Bonus"), unless the list is approved by DSLBD. Any such list submitted and approved by DSLBD shall be attached hereto as Attachment 2 and made a part of this Agreement.

(1) For every dollar expended with a *DBE* for services that fall *within* a Target Sector, Developer shall receive credit for $1.50 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a DBE for services that fall within a Target Sector would be counted as $150,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(2) For every dollar expended with a *CBE* that is not a DBE for services that fall *within* a Target Sector, Developer shall receive credit for $1.25 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a CBE for services that fall within a Target Sector would be counted as $125,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(3) For every dollar expended with a *DBE* for services *not* included in a Target Sector, Developer shall receive a credit for $1.25 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a DBE for services not included in a Target Sector would be counted as $125,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "Director") to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein.

(c) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (*e.g.*, pay without delay programs; establishment of strategic partnerships or mentor-protégé initiatives). In particular, Developer is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs for the Project. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

ARTICLE II
CBE OUTREACH AND RECRUITMENT REPORTS

Section 2.1 Identification of CBEs and Outreach Efforts. Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website (http://dslbd.dc.gov). In particular, Developer shall publish all contracting opportunities for this Project within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit for certification. Throughout the Expenditure Period, Developer or its general contractor/construction manager may (as set forth in Section 4.1) periodically publish notices in any one of the following newspapers primarily serving the District of Columbia: *The Current Newspapers, The Washington Informer,* the *Washington Afro-American, Common Denominator, Washington Blade, Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities in connection with the Project. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.

ARTICLE III
INFORMATION SUBMISSIONS AND REPORTING

Section 3.1 CBE Utilization Plans. Developer shall submit or require its general contractor to submit a CBE utilization plan to DSLBD for approval before or simultaneously with the execution of this Agreement, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without notifying the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for it or its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable and to the Office of the District of Columbia Auditor ("ODCA").

Section 3.2 Quarterly Reports.

(a) Throughout the Expenditure Period, regardless of whether the CBE Minimum Expenditure is achieved before the end of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports ("Quarterly Reports") for the Project which identify:

(i) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the amount of the contract;

(ii) the nature of the contract including a description of the goods procured or the services contracted for;

(iii) the amount actually paid by Developer to the CBE under such contract that quarter and to date;

(iv) the CBE certification number issued by DSLBD;

(v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and

(vi) the percentage of overall development expenditures which were to CBEs.

(b) The Quarterly Reports shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each calendar-year quarter. The Quarterly Reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Reports unless and until the company is certified by DSLBD as a CBE**.

(i) In order to obtain credit towards the CBE Minimum Expenditure requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor.** ***CREDIT WILL ONLY BE GIVEN FOR THE PORTION OF THE CONTRACT/ SUBCONTRACT PERFORMED BY A CBE USING THEIR OWN ORGANIZATION AND RESOURCES.***

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure if the Developer's utilized contractor/ subcontractor:

(1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;

(2) has a pending application before DSLBD seeking CBE certification;

(3) has an expired CBE certification;

(4) has a CBE certification application that DSLBD denied; or

(5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification is valid for **two years.** If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer may check the DSLBD website: http://lsdbe.dslbd.dc.gov/public/certification/search.aspx

(d) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(e) Concurrently with the submission of the Quarterly Reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report.

(f) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Reports shall contain the caption "CBE MINIMUM EXPENDITURE ACHIEVED." Additionally, the final Quarterly Report shall contain the caption "FINAL QUARTERLY REPORT" and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

Section 3.3 Mandatory Reporting Requirements Meeting. Within ten (10) business days of executing this Agreement, the Developer and ODCA shall meet to discuss the reporting requirements during the Expenditure Period. In the event ODCA is unavailable to meet within 10 business days, Developer and ODCA shall meet on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer and ODCA.

DevICE, LLC
3307 M Street, NW
Suite 200
Washington, DC 20007

Sophie Kamal
Financial Auditor
Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
202- 727- 8998
Sophie.Kamal@dc.gov

ARTICLE IV
GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each construction component of the Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for the development project, as applicable, (the "General Contractor"), that the General Contractor comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and General Contractor have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the General Contractor to assure that the General Contractor will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the General Contractor respectively. Specifically, Developer will require in its contractual agreement with its General Contractor ("GC"), or if the Developer and GC have already entered a contractual agreement prior to the execution of this Agreement work with its GC, to achieve the following actions in any employment or contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

(i) The GC may publish a public notice in one newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, The Current Newspapers*, etc.), for the purpose of

soliciting bids for products or services being sought for construction and renovation projects and will allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.

(ii) The GC will contact DSLBD to obtain a current listing of all CBEs qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at http://dslbd.dc.gov for listing opportunities and for subcontracting compliance monitoring.

(iii) The GC will provide a CBE bidder, that is not the low bidder, an opportunity to provide its final best offer before contract award provided the CBE bid price is among the top 3 bidders.

(iv) The GC will not require that CBEs provide bonding on contracts with a dollar value less than $100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.

(v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

(vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer's payment to the GC.

(viii) The GC commits to verify a contractor/ subcontractor's CBE certification status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a contractor/ subcontractor, in accordance with Article III of this Agreement.

ARTICLE V
EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION

Section 5.1 CBE Equity Participation and Development Participation Requirements:

(i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, ("CBEs") shall receive no less than twenty percent (20%) in sponsor Developer equity participation ("Equity Participation") and no less than twenty percent (20%) in development participation ("Development Participation") in the Project, in accordance with Section 2349a of the Act, D.C. Official Code § 2-218.49a;

(ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant's equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;

(iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;

(iv) **CBE Equity Participant's Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;

(v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and

(vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

Section 5.2 Sweat Equity Contribution. No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain ("sweat equity contribution"). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

(i) A detailed description of the scope of work that the CBE will perform;

(ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;

(iii) The date or time period when the CBE will receive compensation;

(iv) The return, if any, the CBE will receive on its sweat equity contribution; and

(v) An explanation of when the CBE will receive its return as compared to other team members or investors.

Section 5.3 CBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan, managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing, performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

Section 5.4 No Changes in CBE Equity Participation and Development Participation.

(i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no change in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and

(ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.

(i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of returns for the CBE Equity Participant(s) without the Director's express written consent;

(ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;

(iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate;

(iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled; and

Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.

(i) If there is a transfer of title to any District-owned land that will become part of the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act;

(ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

(a) The CBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and

(b) The CBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor Developer equity in the Project throughout its development.

Section 5.7 CBE Equity Participation and Development Participation Reports. Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be determined by DSLBD. The reports shall be submitted in accordance with Section 3.2 of this Agreement and shall include information regarding:

(i) Changes in ownership interest of the owners/partners;

(ii) Additions or deletions of an owner/partner;

(iii) Changes in the legal status of an existing owner/partner;

(iv) Changes in the percentage of revenue distribution to an owner/partner;

(v) A description of team member activities; and

(vi) The amount of development fees paid to each team member, participant, partner, or owner.

Section 5.8 Article V of this Agreement Controls.

(i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s)

(ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

Section 5.9 Equity Participation Unmet. If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

ARTICLE VI
CONTINGENT CONTRIBUTIONS

Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure. At the end of the Expenditure Period as defined herein, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer's actual CBE expenditures. If Developer's actual CBE expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the "Shortfall"). If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.2 herein, Developer shall make the following payments, each a ("Contingent Contribution"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the "Contribution Fund"). The Contribution Fund is therefore $1,052,538.

(i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of $1,052,538.

(ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, $210,508.

(iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things[1]:

a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;

b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

[1] See Attachment 6 for a list of suggested outreach activities.

c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;

d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;

e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;

f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request;

g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, $52,627.

In the event a CBE hired as part of the Project goes out of business or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry ("Request"). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% ("Approved Deduction"), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

Section 6.2 Failure to Meet Equity and Development Participation Requirements. Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement and of the Land Disposition and Development Agreement.

Section 6.3 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 6.4 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Primary Contact. The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

Section 7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:
Department of Small and Local Business Development
441 4th Street, N.W., Suite 850 North
Washington, DC 20001
Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

and
Office of the Deputy Mayor for Planning and Economic Development Government of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic Development
Tel: (202) 727-6365
Fax: (202) 727-6703

With a copy to:
Office of the Attorney General
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 407
Washington, DC 20004
Attention: Attorney General
Tel: (202) 724-3400
Fax: (202) 347-8922

To ODCA:
Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
Attention: District of Columbia Auditor
202-727-3600

To Developer:
DevICE, LLC
3307 M Street, NW
Suite 200
Washington, DC 20007
Attention: Mr. Anthony Lanier
Tel: (202) 737-1000
Fax (202) 737-1001

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

Section 7.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or

the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 7.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 7.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 7.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

Attachment 1:	*CBE Minimum Expenditure*
Attachment 2:	*Target Sector List*
Attachment 3:	*Utilization Plan*
Attachment 4:	*CBE Reports*
Attachment 5:	*Vendor Verification Forms*
Attachment 6:	*Suggested Outreach Activities*

Equity Participation and Development Participation Quarterly Report Attachment

Section 7.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

Section 7.12 Recitals. The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

Signatures to follow

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: _____
Malik K. Edwards
Deputy General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 30th DAY OF September 2014

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Director

DEVELOPER, DevICE, LLC

By: _____
Anthony Lanier
EastBanc, Inc. (50% Owner of DevICE, LLC)
Managing Member

By: _____
Dani Levinas
IDEARTS, LLC (50% Owner of DevICE, LLC)
Managing Member

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

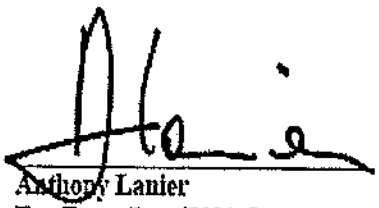
By: _____
Malik K. Edwards
Deputy General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2014

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

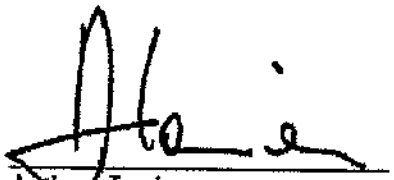
By: _____
Robert Summers
Director

DEVELOPER, DevICE, LLC

By: 
Anthony Lanier
EastBanc, Inc. (50% Owner of DevICE, LLC)
Managing Member

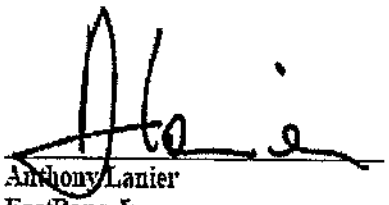
By: _____
Dani Levinas
IDEARTS, LLC (50% Owner of DevICE, LLC)
Managing Member

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

By: 

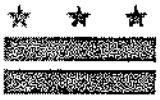
Anthony Lanier
EastBanc, Inc.
President
50% Development Participant
LSZXR84733112015

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

By: 

Anthony Lanier
EastBanc, Inc.
President
50% Project Equity Participant
LSZXR84733112015

Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Jeff DeWitt** **Chief Financial Officer**
DATE:	**October 1, 2014**
SUBJECT:	**Fiscal Impact Statement – "Franklin School Disposition Approval Resolution of 2014"**
REFERENCE:	**Draft Resolution provided to the Office of Revenue Analysis on September 23, 2014**

Conclusion

Funds are sufficient in FY 2015 through FY 2018 budget and financial plan to implement the Resolution.

The disposition of this property will reduce District real property assets by approximately $13,034,160.[1] However, this will have no direct fiscal impact on the District's budget and financial plan because assets are not included in the budget and financial plan.

Background

The Resolution approves the disposition of the District-owned property located at 925 13th Street, N.W., commonly known as the Franklin School, and known for tax and assessment purposes as Lot 808 in Square 285 ("Property"). The property is currently vacant. The resolution authorizes conveyance of the property to DevICE, LLC (the Institute for Contemporary Expression-DC and East Banc) ("Lessee").

The proposed terms convey the property to the Lessee via a 50-year unsubordinated ground lease[2] for nominal payments of $1.00 for the disposition agreement, $1.00 for the closing payment, and $1.00 in annual ground rent. In return, the Lessee must rehabilitate the historic building and use it

[1] FY 2015 Proposed Taxable Assessed Value according to OTR's Real Property Tax Database, accessed September 24, 2014. https://www.taxpayerservicecenter.com.
[2] In general, an unsubordinated ground lease allows the owner of a property to maintain rights to the property even if the tenant defaults on a loan to a third party.

primarily as galleries for displaying contemporary art in rotating exhibits open to the public, as well as permissible ancillary uses.

The Resolution requires the Lessee to contract with Certified Business Enterprises (CBEs) for at least 35 percent of the contract dollar volume of the project, and to include participation of CBEs in the ongoing operation of the project once constructed. Additionally, the Developer is required to enter into a "First Source Agreement" with the District outlining the Developer's obligations regarding job creation and employment generated as a result of the construction on the property.

Financial Plan Impact

Funds are sufficient in FY 2015 through FY 2018 budget and financial plan to implement the Resolution.

The disposition of this property would reduce District real property assets by approximately $13,034,160. However, this will have no direct fiscal impact on the District's budget and financial plan because assets are not included in the budget and financial plan.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: September 24, 2014

SUBJECT: Franklin School Surplus Declaration and Disposition Approval Resolutions of 2014 (AE-14-595)

This is to Certify that this Office has reviewed the legislation entitled the "Franklin School Surplus Declaration and Approval Resolution of 2014" and the "Franklin School Disposition Approval Resolution of 2014" and found them to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.

Janet M. Robins