Takoma Park City Council Meeting – July 13, 2016
Agenda Item 5

Work Session
Presentation and Discussion of Development Agreement with Neighborhood Development Company

Recommended Council Action
None – presentation and discussion only

Context with Key Issues
The Council, recognizing the importance of the Takoma Junction commercial district, purchased the parking lot adjacent to 201 Ethan Allen Avenue in 1995 for the primary purposes of helping to stabilize the small businesses located there and facilitating the revitalization of the overall area. Twenty years later, on April 13, 2015, following a year-long solicitation process, the Council selected Neighborhood Development Company, LLC (NDC) to partner with the City to redevelop the site. The firm was chosen from a field of seven following a careful evaluation of the expertise, financial capacity, and overall vision of the individual development firms. The Council's overarching redevelopment goal was to select a proposal that "*would act as a stimulus to the commercial district and locally-owned, independent businesses, improve the aesthetic appeal of the district, and be contextually sensitive and environmentally sustainable.*"

Following NDC's selection, the focus of the Council, City staff and its development attorney has been on the negotiation of a Development Agreement (Agreement) and the advancement of the project. Once executed, the Agreement will serve as the framework for the finalization of the concept plans presented by NDC and endorsed by the Council, the financing and construction of the project, and the ongoing use of the property.

An overview of the various elements of the draft Agreement will be presented at the July 13 work session. Public comment on the proposed agreement will be heard during the July 20 Council meeting. The Council will be asked to consider the adoption of a resolution authorizing the execution of the Agreement on July 27.

An Open House designed to address any questions the community may have regarding the Agreement and the development process has been scheduled for July 18 from 7 p.m. to 9 p.m. The open house will be held in the Community Room at the Takoma Park Volunteer Fire Station, 7201 Carroll Avenue.

Council Priority
Advance Economic Development Efforts: Takoma Junction Development

Environmental Impact of Action
As stated in the Agreement, the project is to be designed and constructed in a manner that satisfies the requirements for LEED Gold or higher certification from the U.S. Green Building Council or an equivalent certification of environmental sustainability.

Prepared by: Sara Anne Daines, HCD Director
Approved by: Suzanne R. Ludlow, City Manager

Posted 2016-07-07

Fiscal Impact of Action
TBD

Attachments and Links

- Takoma Junction Development Agreement Q&A Sheet
- Takoma Junction Redevelopment – Project Directory
- Takoma Junction Development Agreement (Draft)
- Exhibit C: Ground Lease (Draft)

Prepared by: Sara Anne Daines, HCD Director
Approved by: Suzanne R. Ludlow, City Manager

Posted 2016-07-07

TAKOMA JUNCTION DEVELOPMENT AGREEMENT - Q&A SHEET

Takoma Park City Council, recognizing the importance of the Takoma Junction, purchased the property adjacent to the Takoma Park Silver Spring Co-op in 1995 for the primary purposes of stabilizing the small commercial district and to facilitate the revitalization of the overall area. Twenty years later, on April 13, 2015 following a year-long solicitation process, the Council selected Neighborhood Development Company, LLC ("NDC") to partner with them to redevelop the site. The firm was chosen from a field of seven following a careful evaluation of the expertise, financial capacity, and overall vision of the individual development firms. The Council's overarching redevelopment goal for the site was to select a proposal that "*would act as a stimulus to the commercial district and locally-owned, independent businesses, improve the aesthetic appeal of the district, and be contextually sensitive and environmentally sustainable.*"

As the project progresses, the conversion of the current parking lot into a usable space with new commercial activity, public amenities, and green features will create an active space for members of the community and provide a desired economic boost to the businesses located within this small commercial district. In addition, the redevelopment and long term lease of the lot will provide revenue to the City through rent, real property tax, and business personal property tax.

To facilitate the process of redeveloping the site, a Development Agreement has been negotiated which is to be presented at Council's July 13 meeting. The following are questions members of the community may have about the Agreement along with responses to each. If you have additional questions not covered in this list, please submit them using the following link: https://takomapark.seamlessdocs.com/f/ulL6TK

The Development Agreement includes references to two other documents: a Ground Lease and a Letter of Intent. What is the difference between these agreements?

- Development Agreement ("Agreement"): A contract between a local jurisdiction and a developer which details the obligations of both parties and the terms and conditions that will govern development of a specific property. A signed Development Agreement is binding on both parties and provides assurances that the development conditions that have been negotiated will not change during the term of the agreement. For purposes of the Takoma Junction redevelopment project, the Development Agreement will be signed by the City and NDC prior to any work beginning.

- Ground Lease ("Lease"): A long-term lease, typically 99 years, which involves land and is often entered into to advance a development or redevelopment project. The Ground Lease will be signed by the City and NDC within two years following execution of the Development Agreement.

- Letter of Intent ("LOI"): A non-binding agreement outlining the broad, general terms upon which a landlord and tenant would enter into a lease agreement. For purposes of

this project, the Letter of Intent would be signed by NDC and the Takoma Park Silver Spring Co-op ("Co-op").

What is included in the Takoma Junction Development Agreement?

The draft Development Agreement is typical of many agreements of this nature. It outlines the expectations of the City and NDC, providing a road map that highlights the City's priorities for the redevelopment of the site. It includes aspects of the development process such as the anticipated leasing structure, how community residents will be engaged in the development of elements of the planned project, the steps to be taken to develop and finalize the site plan, and expectations regarding negotiations with the Co-op. It also includes remedies that may be taken in the event that either party terminates the Agreement.

Prior to the finalization of the Agreement, the Council will be required to pass a resolution authorizing the execution of the Agreement by the City Manager on its behalf.

What are the general terms and conditions of the Ground Lease that has been negotiated?

NDC's original proposal included the acquisition of the property for the sum of $100,000. The Council, having determined that it would like greater control over the long term use of the site than it would have if the property were sold outright, advocated for the long term lease of the property.

Under the terms of the draft Ground lease, included as "Exhibit C" to the Development Agreement, the City will retain ownership of the property with NDC assuming ownership of all improvements. The Lease will remain in effect for a period of 99 years. It will not be signed until such time as NDC has secured construction financing for the project, but not later than two years from the date of the execution of the Development Agreement. For example, if the Development Agreement is signed in August, 2016, the Ground Lease will be executed on or before July, 2018. It would remain in place until 2115.

How much rent will NDC pay to the City?

Over the course of the 99 year lease, the City will receive a total of roughly $20 million in lease payments, an average of just over $200,000 a year during the term of the proposed lease. The lease rate escalates over time, so the first ten years of rental income averages $20,400 per year, increasing to an average of $38,500 during Year 11 through Year 20, $52,000 in Year 21 through Year 30, etc.

Lease payments will remain flat at $10,000 per year for the first five years of the lease. This base rent is scheduled to increase at a rate of 3% per year beginning Year 6. The lease payment will be increased by 25% in Year 33 and by another 25% in Year 66.

Assuming the Development Agreement is executed in August 2016, the first lease payment will be made no later than July 2018.

What other forms of revenue will the City receive from this development?

In addition to the rental payment, NDC will be responsible for paying real property taxes on the building and on the revenue-generating areas of the site once the ground lease is signed. Based on the current assessed value and using the current tax rate, the property taxes, for the property in its current state, will be an estimated $11,300 per year. This figure does not account for the value that will be added – and taxed – once the project is completed. The City will also receive business personal property tax on furnishings, inventory and machinery, as applicable, from the commercial tenants in the new development.

How does the Co-op factor into the Development Agreement?

The importance of the role of the Co-op in the Junction and in the community has been emphasized throughout the redevelopment process. The Council affirmed its support of the Co-op as an anchor tenant and community asset, setting a clear expectation from the beginning of the solicitation process that the selected developer would work with the Co-op to facilitate its continued presence in the Junction. Specifically, the draft Development Agreement asks that a Letter of Intent (LOI) be entered into between NDC and the Co-op within four months of the execution of the Agreement. Additional time may be given to complete negotiations at the request of either party.

The LOI, and any future agreement that NDC and the Co-op may enter into is a private business transaction.

The Co-op has publicly stated that its priorities are customer parking, deliveries, and the continued operation of the store during construction. Are their concerns addressed in the Development Agreement?

The Development Agreement does not specifically address the Co-op's concerns and, to some extent are more appropriately addressed in the anticipated Letter of Intent being negotiated between the Co-op and NDC. The location and configuration of future customer parking opportunities and the means by which deliveries will be made will be addressed more specifically during the development and finalization of the site plan.

What happens if NDC and the Co-op are unable to negotiate a Letter of Intent?

In the event that NDC and the Co-op are unable to reach an agreement and finalize a LOI detailing the Co-op's involvement in the planned project, the City could encourage the parties to participate in a facilitated mediation. The Development Agreement states that in the event NDC and the Co-op are have not reached agreement on a LOI after 120 days from the effective date, the City can authorize an additional 30 days for further negotiations or

authorize NDC to begin looking for another primary tenant. If another tenant is sought, NDC will have to provide reasonable accommodations for the continued operation of the Co-op. NDC would not be permitted to lease any portion of the project to another food co-op or grocery store while the Co-op continues to operate in its current location.

What other businesses will be located in the new development?

When determining to proceed with the redevelopment of the property, the Council recognized the importance of creating a retail tenant mix featuring local and regional businesses. The Council has been clear in its preference for the inclusion of local businesses in the development. NDC is actively looking for businesses that will revitalize the area, bring in new customers and enhance the "third space" of the Junction. We anticipate that NDC will begin negotiations with potential tenants once the Development Agreement has been executed with leases finalized closer to the completion of the project.

Recognizing that not all local and regional businesses are appropriate to achieve the City Council's redevelopment goals for the site, the Lease includes a listing of types of businesses that cannot be located on the site (Exhibit C). The list includes but is not limited to pawn shops, check cashing store or "payday" loan operations, gun shops, medicinal marijuana dispensaries, or adult entertainment facilities.

What is the process for community input? When will it happen?

The Council will establish, at NDC's suggestion, an advisory committee, which will assist in developing the process for community engagement. The committee will clarify the aspects of the project's design which will benefit from community input and identify the best means for engaging community members in the development process. Working with the committee, NDC will hold community meetings to gain input on specific aspects of the plan. Appointments to the Community Consultation Process Advisory Committee are tentatively scheduled to be considered by the Council on July 27. More detailed information on the Committee and the application process are available online.

What role will Takoma Park residents play in this process? Will the project be reviewed by other agencies? Will NDC be required to get approvals from Montgomery County?

There are several opportunities for community input during the development process. NDC will be required to go through Montgomery County's site plan review process prior to beginning construction. Community input is required before the application can be submitted for County review. There is also an opportunity for community members to provide comment on the project during the public hearing that will be held before the Montgomery County Planning Board. The Board will not consider the application until after the public comment period has ended. The Council will, as with other projects, facilitate the process offering additional opportunities for public comment at meetings where the site plan will be discussed.

Given its location within the Takoma Park Historic District, the project will also require review by the Takoma Park Façade Advisory Board and the Montgomery County Historic Preservation Commission prior to the issuance of necessary building permits. Additional public comment opportunities are available during each of these required approval steps.

How long will it be until the development is finished?

NDC has provided a timeline for the project which estimates almost four years from the execution of the Development Agreement to completion and occupancy of the building. The estimate includes about a year for Montgomery County's review in order to obtain permits, several months for environmental remediation, and about 18 months for construction. The Development Agreement provides for revisions to the schedule if needed to accommodate unexpected circumstances.

The proposal submitted by NDC prior to its selection by the Council included a variety of features including customer parking for area businesses, residential units, public space, various green features, and improved pedestrian access. Are these features still included in the plan? What will they look like?

The specific features and design elements of the project will be finalized during the site plan process. NDC will, as detailed in the Development Agreement, and in consultation with the City, employ all reasonable measures available to incorporate the following features in the completed project: the construction of a LEED gold or higher building and the incorporation of green strategies in the site plan, the incorporation of residential units, the creation of an accessible outdoor space devoted to year-round public use, and parking options for area businesses not located on the site.

What will happen to the wooded area on Columbia Avenue?

There are no current plans to develop the residentially-zoned lot on Columbia Avenue beyond limited landscaping and the eradication of invasive growth. More specific details regarding the use of the wooded area will be available as the site plan is finalized.

How will the redevelopment impact traffic at the Junction?

As part of the development process established by the Montgomery County Planning Board, NDC will be required to conduct a traffic study that examines the immediate area and the impact of the additional traffic generated by the project. Additionally, the City is working with the Maryland State Highway Administration to examine alternatives to the pressures on the intersection of Ethan Allen and Carroll Avenues.

The Junction will continue to have access to a Capital Bikeshare station and the numerous bus lines that serve the area will continue to provide multi-modal transportation alternatives in the neighborhood. The specific location of these features will be established

as the site plan is developed.

What happens if NDC defaults?

The Development Agreement includes criteria and provisions for possible default by NDC. If a default occurs prior to construction the City will maintain ownership of all permits and other entitlements, market studies, leasing efforts, traffic studies, geotechnical work, and construction plans generated by NDC. The City's interests are protected by a construction performance bond in the event NDC begins but is unable to complete construction of the development. A performance bond, often referred to as a surety bond, is issued by an insurance company or a bank to guarantee satisfactory completion of a project.

If NDC were to fail to construct the project in accordance with the Development Agreement, the City would be guaranteed compensation for the full amount of the performance bond. These provisions would allow the City to hire a builder to finish the project if needed.

Can NDC sell the project?

The Development Agreement allows NDC to sell the project with the express prior written consent of Council. The exception to this requirement is if ownership of the development and the ground lease were transferred to an entity affiliated with NDC such as an LLC created by NDC to facilitate completion of the development. In the event the Council was to approve the sale of the project, the City would retain ownership of the property.

What happens next?

The general terms and conditions of the draft Development Agreement and Ground Lease will be presented to the City Council during its July 13 work session.

The following week, on Monday, July 18, the City will be hosting an open house at the Takoma Park Volunteer Fire Station (7201 Carroll Avenue) from 7:00 p.m. to 9:00 p.m. Members of the community will have an opportunity to speak directly with staff and representatives of NDC and learn more about the draft agreements that have been negotiated, the development review process and how they can become engaged in the development of the final site plan. There will also be an opportunity to speak with NDC about their plans for the site and the pre-development activity they will be undertaking once the Agreement has been signed.

On Wednesday, July 20, the community is invited to provide comment on the draft agreements during the Council meeting.

On July 27, the Council will consider a resolution authorizing the execution of the Development Agreement by the City Manager.

How can I track the status of the project once the Development Agreement is signed?

Information about the project is available on the Takoma Junction Redevelopment page on the City's web site. Interested parties are encouraged to check the page for regular updates as the project progresses.

TAKOMA JUNCTION

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this ___ day of _____, 2016 ("Effective Date"), by and among the City of Takoma Park, Maryland, a municipal corporation, ("City"), and The Neighborhood Development Company, L.L.C, a District of Columbia limited liability company ("Developer") (each a "Party" and collectively the "Parties"), or their respective permitted successors and assigns.

WHEREAS, in 1995 the City purchased the property, commonly known as Takoma Junction, which is located at the intersection of Carroll Avenue and Route 410 in the Takoma Park Historic District of the City and is comprised of multiple parcels and parts of parcels, partly in the NR (Neighborhood Retail) Zone and partly in the R-60 Zone, improved with an asphalt parking lot and containing a total of approximately 1.42 acres of land as more particularly described on Exhibit A ("Property");

WHEREAS, the City purchased the Property for the purpose of stabilizing and revitalizing the Takoma Junction area;

WHEREAS, in January of 2014, the City issued a Request for Proposals ("RFP") seeking proposals for redevelopment of the Property ("Project");

WHEREAS, in response to the RFP, Developer submitted a proposal for the Project;

WHEREAS, by Resolution 2015-19 attached hereto as Exhibit B, the Council of the City ("City Council") chose Developer as the developer for the Project and authorized the City Manager for the City to commence negotiations with Developer for the redevelopment of the Property;

WHEREAS, Resolution 2015-19 provides that the City Council is seeking the following from Developer pursuant to the Project: a) an early resolution between Developer and the Takoma Park – Silver Spring Co-op ("Co-op"), which is currently occupying space on property adjacent to the Property, regarding the Co-op's long-term role as an anchor tenant at the Property; b) continued inclusion of public parking at the Property as part of the Project; c) Project design that minimizes detrimental impacts to neighboring properties on Columbia and Sycamore Avenues; d) continued guidance regarding Developer's design based upon the project goals defined in this document; e) design that optimizes the provision of retail services on the first floor of the building to be constructed

on the Property as part of the Project; and f) the provision of public or community spaces that result in enhanced interactions among residents and visitors (the "Project Goals");

WHEREAS, the Project Goals also include the support of independent businesses; the expansion of community use of public space; improved mobility and an enhanced streetscape at the Property; maintenance and expansion of parking options for area businesses and the provision of pedestrian access from Columbia Avenue to the Property; incorporation of environmentally sustainable and green building features; encouraging alternate modes of transportation in relation to the Property; and a retail tenant mix with a high priority for local and regional operators;

WHEREAS, Developer has prepared an RFP Concept Proposal in response to the RFP, which the City and Developer wish to discuss, add detail to and finalize for submission to the applicable Takoma Park, Montgomery County, Maryland ("County") and State of Maryland ("State") agencies to obtain all required approvals;

WHEREAS, the City and Developer desire to enter into a ground lease for Developer to lease the Property;

WHEREAS, Section 1301 of the Takoma Park Municipal Charter empowers the City to lease property belonging to the City; and

WHEREAS, the City and the Developer desire to enter into this Agreement to set forth their mutual understandings and responsibilities with regard to the lease and redevelopment of the Property in accordance with Project Goals.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings provided for herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Ground Lease of the Property. The City agrees to ground lease its fee simple interest in the Property to Developer in order to facilitate the redevelopment of the Property in accordance with the Project Goals and to establish a retail/commercial destination with a tenant-mix made up predominantly of local and regional tenants and, if the Parties agree, residential units. The ground lease ("Ground Lease") for the Property and improvements constructed thereon ("Ground Lease Premises") shall be executed as provided in the Project Schedule (as defined in Section 7 below). The payment of rent under the Ground Lease shall commence on such date as is provided in the Ground Lease. The term of the

Ground Lease shall be for a period of ninety-nine (99) years. The form of Ground Lease is attached hereto as Exhibit C.

2. Development Plan. At no expense to the City, Developer agrees to plan, design, develop, and build the Project in accordance with the Site Plan/Preliminary Plan developed pursuant to the provisions of Section 6 below as approved, authorized and permitted in accordance with this Agreement and accepted in writing by the City, the Montgomery County Council and any necessary agency of the State.

3. Community Consultation Process Advisory Committee. The City and Developer desire to have community input regarding certain aspects of the development of the Project. In that regard the City and Developer wish to develop a process to both facilitate and manage such community input and feedback from the residents of the City at certain critical stages of the Project development process and have agreed to use good faith efforts to create a Community Consultation Process Advisory Committee and procedure for eliciting feedback from the Community regarding certain aspects of the development process as follows:

   (a) The City will appoint not more than seven (7) residents of the City (if reasonably possible, one resident from each Ward of the City) to form a Community Consultation Process Advisory Committee, which Committee will not make decisions regarding the Project, but will, in conjunction with Developer and the City, develop a process for facilitating community participation in certain aspects of the Project development process, and (b) NDC will develop a listserv or website to elicit feedback from City residents who are unable to attend public meetings.

4. Co-op. Developer is engaged in and shall continue its good faith efforts to negotiate an expansion of the Co-op's existing premises ("Co-op Existing Premises") to occupy part of the Building or Project and, as reasonably required, the use of certain parking and/or access areas located at the Project. Within thirty (30) days of the Effective Date, Developer shall begin providing weekly status updates to the City, which may be provided via e-mail to City Manager, Suzanne R. Ludlow, at SuzanneL@takomaparkmd.gov apprising the City of the status of the letter of intent negotiations between Developer and the Co-op ("Co-op LOI"). If at that date that is one hundred twenty (120) days from the

Effective Date, Developer has not submitted to the City a Co-op LOI executed by the Developer and the Co-op for a lease in accordance with the provisions of this Section 4 then the City in its sole discretion may (a) provide Developer with additional time not to exceed thirty (30) days with which to negotiate the Co-op LOI, or (b) authorize the Developer to commence seeking a letter of intent with another anchor tenant for the Project other than the Co-op ("Primary Tenant") and authorize Developer to provide reasonable accommodation to the Co-op's operation of its business in the Co-op Existing Premises, which accommodation shall include an agreement that NDC will not lease any portion of the Project to another food co-operative (meaning a food distribution outlet organized as a co-operative) or grocery store (meaning a retail grocer or supermarket selling a large variety of food and household items), but such restriction is not intended to exclude specialty shops or other sellers of food and beverages such as, but not limited to, the following: restaurants, coffee shops, frozen yogurts, or gourmet food, or wine and beer shops, during any such period that the Co-op is open and operating in the Co-op Existing Premises, subject to reasonable permitted closures by the Co-op for renovation or inventory or pursuant to the construction of the Project. If the City notifies Developer that it is authorizing Developer to commence seeking a letter of intent with a Primary Tenant and Developer has not executed a lease in the Building with such Primary Tenant within eighteen (18) months of such notice, then the City has the right to terminate this Agreement and the Ground Lease by providing a ten (10) business day notice to Developer and, in such instance, neither Party shall have any further obligation to the other accruing after the effective date of the termination.

5. Physical Inspection. Developer currently has the right to conduct soil borings and other examinations of the physical condition of the Property pursuant to that certain Right of Entry Agreement dated October 26, 2015 between the City and Developer. In the event that Developer has not completed its physical inspection of the Property by the Effective Date, Developer shall have one hundred twenty (120) calendar days following the Effective Date to complete its physical inspection of the Property ("Inspection Period") pursuant to the provisions of the Right of Entry Agreement. Within thirty (30) business days after the expiration of the Inspection Period, if Developer finds that the physical

condition of the Property is not reasonably suitable for the Project based upon its findings during the Inspection Period ("Objectionable Physical Conditions"), Developer shall have the right to notify the City of such Objectionable Physical Conditions and to request that the City remedy those Objectionable Physical Conditions ("Objectionable Physical Conditions Notice"). The City has no obligation to remedy those Objectionable Physical Conditions but if upon the receipt of the Objectionable Physical Conditions Notice, the City does not notify Developer of its intention to remedy the Objectionable Physical Conditions within forty-five (45) days, then Developer may terminate this Agreement and the Ground Lease by providing City with ten (10) business day notice and, upon the expiration of such ten (10) business day period this Agreement shall terminate and neither Party shall have any further obligations hereunder accruing after the effective date of the termination.

6. Site Plan/Preliminary Plan. The Developer and the City agree to cooperate to create a "Site Plan/Preliminary Plan" which will add detail to the RFP Concept Proposal. The Site Plan/Preliminary Plan will be completed in three stages, which are identified as a part of the Project Schedule: 1) Draft Site Plan/Preliminary Plan, 2) Final Site Plan/Preliminary Plan, and 3) construction documents incorporating the plans and specifications of the Building "Construction Documents." These stages of plan development will address the specific Project Goals as well as the objectives of the County, and any necessary agency of the State responsible for the review of land development projects. The Site Plan/Preliminary Plan will incorporate the following characteristics as the same may be modified by agreement between Developer and the City working together in good faith:

    a. City Additions. The Developer agrees to consult with the City and to use its Best Efforts to incorporate the following elements in the Draft and Final Site Plan/Preliminary Plan. As used in this Agreement, "Best Efforts" means that such Party shall endeavor in good faith to employ all commercially reasonable measures available to that Party and within that Party's power, with promptness and due diligence, to bring about the event or result to which the "Best Efforts" obligation refers. Such obligation shall include a requirement that the party make affirmative efforts to accomplish the objective in question.

i. LEED Gold or Higher or Equivalent Requirements. The Developer shall design and construct the Project so that the Building satisfies the requirements for LEED Gold or higher certification from the U.S. Green Building Council or an equivalent certification of environmental sustainability from an established organization reasonably acceptable to the City ("LEED Gold or Higher or Equivalent Requirements").

ii. Green Elements. In addition to ensuring that the Building satisfies the requirements for LEED Gold or Higher or Equivalent Requirements, the final specifications for the incorporation of green building strategies will be resolved through the development of the Final Site Plan/Preliminary Plan for the Project in consultation with the City.

iii. Residential Units. The Building may include residential units.

iv. Public Gathering Space. Developer shall use its Best Efforts to create an accessible outdoor space devoted to year-round public use or enjoyment that attracts the public. The public open space must fulfill the design requirements outlined in Section 6.3.6 of the Montgomery County Zoning Ordinance after community input facilitated through the Community Consultation Process Advisory Committee as more fully outlined in Section 3 above.

v. Improved Mobility and Enhanced Streetscape. The Project will be designed to preserve and include alternatives to automotive transportation, such as a bicycle sharing station and bicycle racks.

vi. Parking. The Project will be designed to provide parking options for area businesses not located within the Project as agreed to between the Developer and the City.

vii. Retail and Other Commercial Uses Emphasizing Local and Regional Operators. Developer shall consult with the City, as more particularly addressed in the Ground Lease, for the leasing of the commercial space within the Building predominantly to local and regional operators to establish a retail/commercial destination that provides options for the local

community and shall agree on leasing parameters, all as more fully addressed in the Ground Lease.

b. If despite good faith negotiations, Developer and City are unable to agree on Draft Site Plan and Preliminary Plan by the deadline provided in the Project Schedule the Parties agree to extend the time frame in the Project Schedule for the completion of the Draft Site Plan and Preliminary Plan by one hundred twenty (120) days to allow the Parties to meet in good faith in a non-binding forum with a neutral third-party from the greater Washington, D.C. metropolitan area real estate community collectively chosen by Developer and City (and with each Party paying for one-half of such neutral third-party's fee) who is familiar with mixed-use or retail projects in the greater Washington, D.C metropolitan area, such as a commercial real estate broker, architect, urban planner, or developer who will advise and attempt to assist the Parties in reaching agreement on the foregoing issues identified in this Section 6. The foregoing notwithstanding, if at the end of the additional 120-day period, the Parties are still unable to agree on the foregoing issues identified in this Section 6, then either Party may terminate this Agreement and the Ground Lease by providing 30-day notice to the other and in which event neither Party shall have any liability or obligations hereunder accruing after the effective date of the termination.

7. Project Schedule.

a. Within thirty (30) business days of the Effective Date, Developer shall provide the City with a final Project Schedule ("Project Schedule"), which will be attached to this Agreement as Exhibit D. The Project Schedule will outline and track the development process for the Project including "Commencement" and "Finish" dates for each Main Task (as defined in Section 12 below) identified as such and shown on the Project Schedule. The City will have thirty (30) business days after receipt to review and either approve or reject the Project Schedule. If the City rejects the Project Schedule, Developer shall use its Best Efforts to incorporate suggestions received from the City into the revised

Project Schedule and shall continue to resubmit the Project Schedule for approval until such approval is obtained ("Approved Project Schedule"). If despite good faith negotiations, Developer and the City are unable to agree on an Approved Project Schedule within one hundred twenty (120) days of the Effective Date, then either Party may terminate this Agreement and the Ground Lease by providing 10-days' notice to the other and in which event neither Party shall have any obligations or liabilities hereunder accruing after the effective date of the termination.

b. If at any time a Main Task set forth on the Approved Project Schedule cannot be completed by the "Finish" date, then Developer shall notify the City in writing at least fifteen (15) business days before the deadline. Such notification must state the reasonable additional time needed for the task and the reason(s) the Main Task cannot be completed by the "Finish" date. In the event the City, County, and/or State, or any situation beyond the reasonable control of Developer are a cause of the Main Task not being completed, the Developer shall be granted the additional time needed to complete the task. The City shall notify Developer of an approval or denial of Developer's request within five (5) business days of receipt of Developer's request. Requests to the City for extensions shall not be unreasonably withheld; however, it will be within the City's discretion to deny such requests if the reason for the failure to meet the Finish date for a task is within the Developer's control. Any failure to meet a Finish date for which an extension of time either is not sought or is denied will be considered a Default under section 8 of this Agreement.

c. Developer shall be entitled to revisit the Approved Project Schedule upon completion of an identified Main Task, to ensure that the Project Schedule reflects the most up to date information based on resolved Project parameters. Within fifteen (15) business days of completion of a Main Task, Developer shall provide the City with an updated Project Schedule. The City will have

fifteen (15) business days after receipt to review and either approve or reject the updated Project Schedule. If the City rejects the updated Project Schedule, Developer shall use its Best Efforts to incorporate suggestions received from the City into the revised Project Schedule and shall continue to resubmit the Project Schedule for approval until such approval is obtained. If despite good faith negotiations, Developer and the City are unable to agree on an updated Project Schedule within one hundred twenty (120) days of submission of the updated Project Schedule to the City, then either Party may terminate this Agreement and the Ground Lease by providing 10-days' notice to the other and in which event neither Party shall have any obligations or liabilities hereunder accruing after the effective date of the termination.

d. "Substantial Completion" means the stage in the construction of the Project, when the following have been satisfied, subject to Developer's completion of its punch list items:

(i) construction and delivery of loading dock(s), if applicable, the underground parking garage and exterior walls, floors, and roof of the Building ("Building Shell") shell in accordance with the final Construction Documents for the Project such that the work meets all applicable legal requirements necessary for the issuance by the applicable agency or division of the City or County of a Certificate of Occupancy, broom clean and free from debris caused by or created by Developer and its agents employees contractors and subcontractors;

(ii) completion of the foregoing areas in such a manner as to be accessible and usable by Subtenants and their customers for parking and loading purposes;

(iii) completion of the Building's lobby area(s), elevator cabs, if any, and all other common areas to be used by Subtenants and residential tenants, if any, and the rendering of such areas in broom clean condition, free from debris caused by or created by Developer and its agents, employees, contractors and subcontractors;

(iv) delivery of a dated certificate (AIA form G704 or equivalent form approved by the City) from the architect responsible for construction of the Building Shell stating that upon such date and in such architect's professional judgment, made in accordance with the applicable standard of care, Substantial Completion of the Building Shell and the other improvements has occurred in accordance with the definition of Substantial Completion set forth in this Agreement and in accordance with the Final Site Plan and Construction Documents, subject to punch list items;

(v) with respect to the retail areas of the Building, completion in accordance with Construction Documents to the level of "cold dark shell" so that the Developer or the applicable Subtenant can commence Subtenant buildouts;"

(vi) completion of substantially all work in the residential apartments, if any, except for punch list items, such that such units can be leased;

(vii) completion of substantially all streetscapes, sidewalks, lighting and public spaces as required by the Final Site Plan;

(viii) delivery to Developer of all warranties and other similar documents that relate to equipment and other materials installed in the Building obtained by Developer; and

(ix) all contractors and subcontractors performing work on such phase, component or portion of the improvements have been paid in full (less any retention for punch list items);

(x) all lien releases for such work have been executed, notarized and delivered to Developer with copies being provided to the City.

8. Default. City and Developer are required and agree to comply with all of the terms and conditions of this Agreement and to execute the Ground Lease and construct the Project in accordance with the terms of this Agreement, and both Parties acknowledge that failure to do so constitutes a default hereof. The term "Default" shall mean any material default by either Party of the terms and conditions of this Agreement and/or a default regarding a Main Task as listed in the Project Schedule where such material default remains uncured for thirty (30) days after receipt of written notice; provided, however, that if such failure is capable of cure but cannot reasonably be cured within thirty (30) days, such failure shall not constitute a default so long as the defaulting Party is proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) days after such written notice.

9. Remedies.

   a. Developer's Default. If Developer is in Default, the City may terminate this Agreement and the Ground Lease upon thirty (30) day notice to Developer. If the City terminates this Agreement, the City may not seek monetary damages or specific performance from the Developer, but upon such termination Developer will assign and transfer all the benefits and products of Developer's work at or regarding the Property to date, including but not limited to its rights to any and all permits,

contracts, plans, drawings, licenses, lien releases, fees and deposits being held, work product, studies, and entitlements to the Project to the City and will transfer ownership to the City of any and all materials, fixtures and equipment obtained for or improvements made to the Property and any trademarks or other intellectual property and the City may seek damages and specific performance against Developer should it fail to effect such assignment or transfer, and if the Developer has "Commenced Construction" (meaning the date when materials or labor is provided to the Property by Developer or their contractors for the demolition, grading, or improvement of the Property"), then the Developer will reasonably cooperate in assisting the City in collecting under the Performance Bond as defined in Section 12 below. The City, in its sole discretion, may agree to defer the exercise of its remedies for up to sixty (60) days pursuant to a Developer Default provided the Developer agrees to meet in a non-binding forum with a neutral third-party from the greater Washington, D.C. metropolitan area legal community, such as a retired judge or lawyer with substantial mediation experience, collectively chosen by the Developer and City (and who will each pay for one-half of such neutral third-party's fee), who will advise and attempt to assist the Parties in reaching a resolution of the Developer's Default. The foregoing notwithstanding, if at the end of the additional 60-day period, the Developer's Default is not resolved to the satisfaction of the City in its sole discretion then the City may terminate this Agreement and the Ground Lease and shall be free to exercise all of the remedies provided to the City herein.

b. City Default. If the City is in Default after the expiration of all applicable cure periods, the Developer may terminate this Agreement and the Ground Lease upon thirty (30) day notice to the City or seek specific performance, but Developer is not entitled to receive monetary damages from the City for the City's Default. The Developer, in its sole discretion, may agree to defer the exercise of its remedies for up to sixty (60) days pursuant to a City Default provided the City agrees to meet in a non-binding forum with a neutral third-party from the greater Washington, D.C. metropolitan area legal community, such as a retired judge or lawyer with substantial mediation experience, collectively chosen by the Developer and City (and who will each pay for one-half of such neutral third-party's fee), who will advise and attempt to assist the Parties in reaching a resolution of the City's Default. The foregoing notwithstanding, if at the end of the additional 60-day period, the City's Default is not resolved to the satisfaction of the Developer in its sole

discretion then the Developer may terminate this Agreement and the Ground Lease or seek specific performance, but Developer is not entitled to receive monetary damages from the City for the City's Default.

10. Property Condition.

a. The Parties agree that the City has made no warranties with reference to the condition of the Property or improvements thereon and the Property is being provided to the Developer pursuant to the Ground Lease in "as is" condition. The Developer specifically acknowledges and agrees that the Developer is ground leasing the Property on an "as is" basis and that Developer is not relying on any representations or warranties, express or implied, from the City or its agents, as to any matters concerning the Property, including and without limitation any aspect thereof. Further, the Developer, on behalf of itself and its successors and assigns, waives its rights to recover, and forever releases and discharges, the City, its officers, employers and agents, and each of them, and the respective heirs, successors, representatives and assigns from any and all demands, claims, legal or administrative proceedings, losses, liabilities, penalties, fines, liens, judgments, costs or expenses whatsoever (including without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with the Property.

b. The Property currently contains certain personal property belonging to the City and the Co-op, including parking pay stations, fencing and storage units. The City reserves the right to remove any items of personal property from the Property, at its expense or that of the Co-op, prior to delivery of possession of the Property to Developer pursuant to the Ground Lease.

11. Indemnification/Limitations of Liability.

a. Limitation of Liability. In no event shall either Party be liable for special, exemplary, punitive, incidental, indirect or consequential damages resulting from

any breach of this Agreement or otherwise, even if such Party has been notified of the possibility of same. This clause shall survive termination of this Agreement.

b. Indemnification by Developer. Developer hereby agrees to defend, indemnify and hold City and its officials, employees, agents, boards and agencies harmless from and against any and all claims, judgments, liabilities, damages (excluding lost profits or other consequential or indirect damages), costs and expenses (including reasonable attorneys' fees): (i) arising out of or relating to Developer's negligence or willful misconduct; (ii) arising out of a violation of applicable law by Developer; (iii) arising out of or relating to a claim brought by a third party against City that any design of Developer infringes or violates any intellectual property or proprietary right of a third party; and/or (iv) arising out of or related to Developer's breach of this Agreement.

12. Construction Performance Bond. Within three (3) business days of Commencement of Construction, Developer, or its General Contractor, shall furnish a performance bond issued by a reputable surety company in a form consistent with the standards of the industry as a guarantee of Developer's meeting the construction-related Main Task "Finish" dates outlined in the Approved Project Schedule and any revisions thereto and the Substantial Completion of the Project. Said performance bond shall be subject to the approval of the City Manager and shall be with a surety and in a form reasonably satisfactory to City Manager. The total amount of the performance bond shall be forfeited in favor of the City if Developer fails to complete a Main Task by or achieve Substantial Completion of the Project by the "Finish" date outlined in the Project Schedule. A "Main Task" shall be defined as an item on the Approved Project Schedule whose failure to achieve the stated "Finish" date jeopardizes the Substantial Completion of the construction of the Project in a timeframe consistent with the Approved Project Schedule and shall include, but not be limited to, site plan approval, creation and approval of construction drawings, issuance of the building permits; construction commencement date, construction milestones, final inspection and construction completion, including completing exterior site improvements such as parking, hardscape and landscaping, designing and constructing the Project so that

it satisfies the requirements of LEED Gold or Higher or Equivalent Certification, and occupancy permits as required by the County.

13. Notices. All notices, approvals, and other communications required pursuant to the terms of this Agreement shall be in writing and shall be deemed duly given if delivered (i) by email at the record email address of the other Party, (ii) by hand, (iii) by same day or overnight courier service, or (iv) by first class U.S. mail to the Parties at the following addresses (or to such other person or address as either Party shall designate by written notice to the other). All written notices, approvals, or other communications given under this Agreement shall be considered given on the date of email transmission, hand delivery, courier delivery, or deposit in the United States mail. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

If to the City:

Suzanne R. Ludlow, City Manager
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912
Phone: (301) 891-7229; fax (301) 270-8794
E-mail: SuzanneL@takomaparkmd.gov

With a copy to:

Douglas M. Bregman, Esq,
Bregman, Berbert, Schwartz & Gilday, LLC
7315 Wisconsin Avenue
Suite 800 West
Bethesda, Maryland 20814
(301) 656-2707; (301) 961-6525
dbregman@bregmanlaw.com

and

Susan Silber, Esq.
Silber, Perlman, Sigman & Tilev, P.A.
6930 Carroll Avenue, Suite 610
Takoma Park, Maryland 20912
(301) 891-2200; fax (301) 891-2206

Silber@sp-law.com

If to the Developer:

Adrian G. Washington, Manager
Neighborhood Development Company, L.L.C.
3232 Georgia Avenue, NW, Suite 100, Washington, DC 20010
Phone (202) 722-6002, ext. 2211; fax (202) 722-6509
E-mail: AWashington@neighborhooddevelopment.com

With a copy to:

Joel F. Bonder, Esq.
JF Bonder PLLC
3610 Livingston Street, NW
Washington, DC 20015
Phone: (301) 529-1422
Email: jbonder@jfbonder.com

14. Miscellaneous.

a. Successors and Assigns. The Parties to this Agreement mutually agree that all of the terms and provisions of this Agreement shall be binding upon them and each of their respective successors, transferees, and assigns.

b. Entire Understanding. This Agreement contains the final and entire agreement between the Parties. Neither the Parties, nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained or contained in a written amendment. Once signed, the terms of this Agreement may only be changed by a document executed by all Parties. The invalidity of any clause or portion of any provision of this Agreement shall not affect the validity of the remaining portions thereof. This Agreement shall be interpreted and construed according to the laws of the State.

c. Waiver. Waiver of any requirement of this Agreement by either Party may only be granted by the waiving Party pursuant to a written waiver executed by the waiving Party. Failure of any Party to exercise any right or remedy hereunder shall not impair any of its rights or be deemed a waiver thereof.

d. Section Headings. The section headings of this Agreement are for convenience

and reference only, and in no way define or limit the intent, rights or obligations of the Parties.

e. Assignment. This Agreement may be assigned by Developer only with the express prior written consent of the City, which may be withheld in the City's sole and absolute discretion, except that no consent shall be required to assign this Agreement to an Affiliate of Developer, "Affiliate" meaning an individual, firm, partnership, association, corporation, limited liability company, or any other entity which either controls, is controlled by, or is in common control with The Neighborhood Development Company, L.L.C. If Developer assigns this Agreement to an Affiliate, then Developer shall provide prompt notice of such assignment to the City along with information and documentation regarding the formation and ownership of such Affiliate. Such assignment shall not release Developer of any of its obligations hereunder, and Developer shall remain fully liable therefor.

f. No Merger. The provisions of this Agreement shall survive the execution and effective date of the Ground Lease and shall not merge into the Ground Lease.

g. Attorney's Fees. In any action or proceeding involving a dispute between the City and the Developer arising out of this Agreement, the prevailing Party shall be entitled to receive from the other Party reasonable attorney's fees and costs as determined by the court.

h. Force Majeure. Each Party to this Agreement shall be excused from performance hereunder for any period of time to the extent that it is prevented from performing any of its obligations pursuant hereto, in whole or in part, as a result of delays caused by an act of God, fire, explosion, transportation contingencies, unusually severe weather, quarantine, restriction, epidemic, natural catastrophe, terrorist attack, war, civil disturbance, acts of the government of any country or of any governmental agency or official thereof not specific to the Property, court order, labor dispute or shortage, third party non-performance, or other unforeseen causes, events, or circumstances beyond its reasonable control ("Force Majeure"), and such non-performance shall not be a default under this Agreement nor a ground for

termination of this Agreement as long as the excused Party makes reasonable efforts to remedy, if and to the extent reasonably possible, the cause for such non-performance. Each Party shall use commercially reasonable efforts to mitigate the effects of any Force Majeure. If any Force Majeure has been prevailing for a continuous period of six (6) months or more, then either Party shall have the right to terminate this Agreement and the Ground Lease upon written notice given to the other, the effectiveness of such notice to occur thirty (30) days following receipt of such notice and, in such instance, neither Party shall have any further obligation to the other accruing after the effective date of the termination.

i. Governing Law/Venue. This Agreement and all of the rights and obligations of the Parties hereunder shall be construed in accordance with, and shall be governed by, the laws of the State without giving effect to principles of conflicts of law. The Parties agree that any and all causes of action between the Parties arising from or in relation to this Agreement shall be brought exclusively in the Circuit Court for Montgomery County Maryland and Developer hereby waives any objection as to venue.

j. Insurance. Developer shall maintain during the term of this Agreement such public liability, automobile, and workers' compensation insurance as will adequately protect City from all claims for damages, including claims for personal injury (including death) or damage to property, which may arise or result from Developer's performance hereunder. This insurance shall include, but is not limited to: (1) worker's compensation and related insurance as prescribed by the law of the state in which the work is performed; (2) employer's liability insurance with limits of at least Two Million Dollars ($2,000,000) for each occurrence; and (3) comprehensive general liability insurance with limits of at least Five Million Dollars ($5,000,000), including contractual liability, products and completed operations coverage; (4) comprehensive motor vehicle liability insurance, with limits of at least One Million Dollars ($1,000,000), and (5) policies of fire and extended coverage with "all-risk" endorsement, on the Building and all other improvements to be constructed by the Developer on the Property in accordance

with the provisions of this Agreement, with such insurance to be in the amount of the full replacement cost of the Building and all other improvements on the Property. Developer shall, prior to the start of work, furnish certificates or adequate proof of the foregoing insurance. Certificates furnished by Developer shall contain a clause stating that City shall be notified in writing at least thirty (30) days prior to the cancellation of, or material change, in the policy. The City and its officials, employees, agents, boards and agencies shall be specified as an Additional Insured on all liability policies, except worker's compensation.

k. Waiver of Right to Jury Trial. The Parties hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, or hearing brought by either Party against the other on any matter whatsoever arising out of, or in any way connected with, this Agreement.

15. DEVELOPER'S/CITY'S AGENT. (a) City hereby designates City Manager Suzanne R. Ludlow whose e-mail address is SuzanneL@takomaparkmd.gov and whose telephone number is 301-891-7229 to act as the City's authorized representative under this Agreement, for the purpose of receiving notices and communications from Developer on behalf of City and providing notices and communications to Developer on behalf of the City and Developer shall have the right to rely on any documents executed by such authorized representative; and (b) Developer hereby designates Juan Powell whose e-mail address is jpowell@neighborhooddevelopment.com and whose telephone number is (202) 567-3201 to act as Developer's authorized representative under this Agreement, for the purpose of receiving notices and communications from the City on behalf of Developer and providing notices and communications to the City on behalf of Developer and the City shall have the right to rely on any documents executed by such authorized representative.
16. Time. The Parties agree that with respect to all of the terms and conditions hereof, time is of the essence.
17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one agreement. The signature of any Party, whether original,

electronic or transmitted electronically, to any counterpart shall be deemed an original signature.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement under seal.

CITY:

Attest:

CITY OF TAKOMA PARK, MARYLAND

_____

_____(SEAL)
Suzanne R. Ludlow, City Manager

Date:_____

DEVELOPER:

Attest:

THE NEIGHBORHOOD DEVELOPMENT COMPANY, L.L.C., a District of Columbia limited liability company

_____

_____(SEAL)
Adrian G. Washington, Manager

Date:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION

Metes and Bounds Description: Lot 39 & P/O Lots 32-37, Block 19 B.F. Gilberts Addition to Takoma Park, Wheaton (13th) Election District, Montgomery County, Maryland

Beginning for the subject property at an iron rod set at the southerly corner of Lot 39 in Block 19 of B.F. Gilberts Addition to Takoma Park Subdivision which is as recorded in Plat Book "A" at Folio 2 among the Land Records of Montgomery County, Maryland and thence with the division line between Lots 14 and 39 North 54° 18' 07" West, 182.67 feet to an iron rod set at the common corner of Lots 39, 14, 30, 31 & 32 and thence with part of the division line between Lots 31 and 32 North 00° 53' 09" West, 79.08 feet to an iron rod set and thence crossing Lot 32 with the following two courses and distances (1) North 85° 59' 18" East, 33.77 feet to a nail set and thence (2) North 04° 00' 42" West, 137.05 feet to an iron pipe found and thence with the southerly right of way line of Carroll Avenue (60' R/W) Maryland State Route #I95 and Route 410 along the arc of a curve deflecting to the right and having a radius of 316.76 feet and a long chord bearing and distance of North 78° 20' 19" East, 16.14 feet and an arc distance of 16.15 feet to a P.K. nail set and thence recrossing Lot 32 South 04° 00' 42" East, 139.20 feet to an iron rod set and thence crossing Lots 32 and 33 North 85° 59' 18" East, 38.95 feet to a P.K. nail set and thence crossing Lot 33 North 04° 00' 43" West, 141.41 feet to a P.K. nail set and thence continuing with the aforesaid southerly right of way line of Carroll Avenue North 83° 58' 14" East, 187.75 feet to an iron set and thence crossing Lot 37 South 04° 00' 42" East, 182.56 feet to an iron rod set and thence with the northerly right of way line of Columbia Avenue (40' R/W) the following three courses and distances (1) South 60° 05' 47" West, 2.89 feet to an iron rod set and thence (2) along the arc of a curve deflecting to the left and having a radius of 240.00 feet and a long chord bearing and distance of South 42° 10' 10" West, 147.75 feet and an arc of 150.18 feet to an iron rod set and thence (3) South 24° 14' 33" West, 65.36 feet to the point of beginning and containing 61,862 square feet or 1.4202 acres of land more or less.

EXHIBIT B

RESOLUTION 2015-19 – THE CITY OF TAKOMA PARK

EXHIBIT C

FORM OF GROUND LEASE

EXHIBIT D

PROJECT SCHEDULE

EXHIBIT C

GROUND LEASE

City of Takoma Park, Maryland,
a municipal corporation,

Landlord,

and

NDC Takoma Junction, LLC,
a Maryland limited liability company

Tenant

_____, 2016

TABLE OF CONTENTS

GROUND LEASE

THIS GROUND LEASE is executed this ___ day of _____, 2016, by and between, City of Takoma Park, Maryland, a municipal corporation, as the "Landlord," and NDC Takoma Junction, LLC, a Maryland limited liability company, as the "Tenant," and their respective successors and assigns

RECITALS:

A. Landlord owns fee title to certain real property, commonly known as Takoma Junction, which is located at the intersection of Carroll Avenue and Route 410 in the Takoma Park, Maryland containing approximately 1.42 acres of land ("Land") with improvements as more particularly described on Exhibit "A" attached hereto ("Property").

B. Landlord and Tenant have executed that certain Development Agreement dated _____ ("Development Agreement") whereby Landlord and Tenant agree to the redevelopment of the Property in accordance with the provisions thereof.

C. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises together with all improvements constructed or to be constructed thereon and rights (including, without limitation, all easements appurtenant thereto for the purpose of leasing, developing, constructing and operating improvements), all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the Recitals and the mutual covenants herein contained, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, in accordance with the provisions of this Lease.

AGREEMENTS:

1. DEFINITIONS.

"Affiliate" means any Person or Entity who or which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a Person or an Entity (the term "control for purposes of this definition means the ability, whether by ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to select the managing member of a limited liability company, the managing or general partner of a partnership, or otherwise to select or have the power to remove and then select, a majority of those Persons exercising governing authority over an Entity).

"Alterations" means any construction, reconstruction, replacement, expansion, repair or alteration of the Premises.

"Applicable Law" means all applicable laws, rules, regulations, ordinances, orders and requirements of each Governmental Authority that are or may become applicable to the Premises.

"Building" means the Building to be designed and constructed as mutually agreed per the Development Agreement.

"Default Rate" means ten percent (10%) per annum.

"Development Rights" means, collectively, all density rights and rights to develop, construct, improve and expand the Property, in accordance with Applicable Law.

"Effective Date" means the date of full execution of this Ground Lease.

"Entity" means any corporation, partnership, limited liability company, association, trust or other organizational form.

"Force Majeure" means the following events or circumstances, to the extent that they cause the delay of performance of any obligation hereunder incurred by the claiming party and such delay is beyond the reasonable control of the party claiming the Force Majeure: (i) strikes or lockouts or inability to procure materials or suitable substitute materials or failure of utilities necessary for performance; (ii) changes in law applicable to the Premises; (iii) acts of God, tornadoes, hurricanes, floods, sinkholes, fires and other casualties, landslides, earthquakes, and abnormally inclement weather for the area; (iv) acts of war, terrorism, blockades, insurrection, riots, civil disturbances, or national calamities; and (v) delays caused by delays in approval from, or changes ordered by, any governmental authority with authority over the applicable item, provided that the party seeking such approval is diligent in the commencement and pursuit of same. The shortage or unavailability of funds shall not be grounds for Force Majeure.

"Governmental Authorities" means any of Takoma Park, Maryland; Montgomery County, Maryland; State of Maryland; Federal; or any other governmental authority or agency having jurisdiction over the Property, Premises, Improvements, or ownership, construction and operation thereof.

"Impositions" means all real estate taxes, governmental levies, and obligations for any and all other governmental, quasi-governmental, utility and similar charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which shall during the Lease Term hereof, be made, assessed, levied or imposed upon, or become due and payable in connection with, or a Lien upon, the Land, the Property, the Premises, or any part thereof, or any appurtenance thereto, or any Improvements, or upon this Lease, including any and all development impact taxes or fees or other required contributions for public amenities, services or improvements, or for any parking or development district matters, related to the use of the Premises by Tenant or any party claiming through Tenant, including the tenants under any Sublease.

"Improvements" means any buildings, structures, garages, parking areas, paved areas, loading areas, driveways, roadways, medians, sidewalks, walkways, curbs, gutters, storage areas, canopies, fences, gates, screening devices, walls, poles, signs, exterior lighting and lighting standards, trash enclosures, exterior air conditioning equipment, antennae, landscaping, gardens, water features, utility lines, pipes and conduits, or similar improvements and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

"Guarantor" means The Neighborhood Development Company, L.L.C., a District of Columbia limited liability company pursuant to the provisions of that certain Guaranty of Lease attached hereto as Exhibit D.

"Landlord" means the Person named in this Lease as Landlord or the Person who at the time in question is the successor in interest of the named Landlord, whether by assignment, foreclosure or other transfer, and whether by voluntary act or by operation of law.

"Lease" means this Ground Lease and/or the leasehold estate created thereby, as the context requires, as amended, restated, modified or extended from time to time.

"Lease Commencement Date" The earlier of the date (i) that Landlord delivers possession of the Property to Tenant, (ii) of the closing of the Tenant's Construction Loan, and (iii) that is 720 days after the Effective Date (as defined in the Development Agreement) of the Development Agreement.

"Lease Term" has the meaning provided in Section 3.1.

"Lease Year" means each twelve-month period commencing on the Rent Commencement Date; provided, if the Rent Commencement Date occurs other than on the first day of a month, then: (a) each Lease Year shall commence on the first day of the first month following the month in which the Rent Commencement Date occurs and the same day of each year thereafter; and (b) the first Lease Year shall include that portion of the month (Rent Commencement Date and following days of such month) in which the Rent Commencement Date occurs.

"Leasehold Financing" means any loan(s), including the principal thereof, all interest and other amounts that may become due in connection therewith and all of the terms and conditions thereof made to Tenant by Tenant's Lender and secured by a Leasehold Mortgage.

"Leasehold Mortgage" means one Mortgage securing Tenant's Lender and encumbering Tenant's interests in this Lease, Tenant's leasehold interest or estate in the Premises created hereunder, and/or the Improvements. Tenant may not encumber Tenant's leasehold interest or estate in the Premises created hereunder with more than one (1) Leasehold Mortgage at a time.

"Leasing Guidelines" means predominantly for local and regional retail operators and a prohibition on Prohibited Uses as listed in Exhibit "C", unless otherwise consented to by the Landlord, which consent may be withheld in Landlord's sole discretion.

"Lender" means the party or parties secured by any Mortgage, or the beneficiary of any deed of trust, or other obligation of any indebtedness secured by a Mortgage or Deed of Trust.

"Tenant's Lender" means the Lender under any Leasehold Mortgage.

"Lien" means a mechanic's, materialman's, contractor's, subcontractor's or similar Lien or claim allowed by Applicable Law and arising pursuant to construction activities on or operation of the Premises.

"Memorandum" means a Memorandum of Lease, in recordable form, to be executed by Landlord and Tenant and recorded at Tenant's request, in the form of Exhibit "B" attached hereto.

"Mortgage" means a mortgage, deed of trust, indemnity deed of trust, or other financing or security instrument or encumbrance commonly given to secure loans (or guarantees thereof) from a Lender or advances on, real estate and/or leasehold estates and the note, credit instrument, guaranty or other evidence of indebtedness secured thereby which are recognized in the State of Maryland as a Lien on real property, and all documents executed in connection therewith. The term "Mortgage" shall include a Leasehold Mortgage.

"Operating Costs" means the actual costs paid for utilities, maintenance, repairs, taxes, costs of insurance and other recurring expenses necessarily and reasonably incurred in operating and maintaining the Premises.

"Permits" means all applicable permits, authorizations and approvals.

"Permitted Assignee" means an entity owned and controlled by The Neighborhood Development Company, L.L.C., a District of Columbia limited liability company or an Affiliate of Tenant.

"Permitted Use" means construction, maintenance and use of the Premises as a retail/commercial destination with a tenant-mix made up predominantly of local and regional tenants and, if Landlord and Tenant agree pursuant to the provisions of the Development Agreement, residential units.

"Person" means any natural person or persons in individual or representative capacities and any Entity or Entities of any kind whatsoever including, without limitation, corporations, partnerships, limited liability companies and associations, or any combination of persons and entities.

"Plans" means any plans and specifications for all or a part of the Improvements, prepared in sufficient detail to reasonably demonstrate the Improvements contemplated thereby.

"Premises" means the Land, Property and all benefits and burdens upon or appurtenant to the Property, together with any Improvements from time to time constructed thereon and all rights appurtenant thereto.

"Recordation, Recording" (or equivalent) means recordation in the Land Records of Montgomery County, Maryland.

"Rent" means, as applicable, the Base Rent defined in Section 4.1 and provided in Schedule 1. The term "Rent" shall also include any escalations, costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or arising from the term of Lease, as provided in this Lease, and which are the obligation of the Tenant hereunder, including without limitation the costs of all Impositions, Operating Costs and insurance and all other costs and expenses of Landlord whatsoever resulting from the Tenant's nonpayment of same.

"Rent Commencement Date" The earlier of the date (i) of the closing of the Tenant's Construction Loan, (ii) of the investment of funds by private or public investors as a means of financing Tenant's construction of Improvements on the Property, and (iii) that is 720 days after the Effective Date of the Development Agreement.

"Reversionary Interest in the Improvements" means Landlord's interest in the fee simple ownership of the Improvements at the end of the Lease Term.

"Sublease" means any leases entered into with respect to the Premises or any part thereof, by Tenant, as landlord.

"Substantial Completion" means the stage in the construction of the Project, when the following have been satisfied, subject to Developer's completion of its punch list items:

(i) construction and delivery of loading dock(s), if applicable, the underground parking garage and exterior walls, floors, and roof of the Building ("Building Shell") shell in accordance with the final Construction Documents for the Project such that the work meets all applicable legal requirements necessary for the issuance by the applicable agency or division of the City or County of a Certificate of Occupancy, broom clean and free from debris caused by or created by Developer and its agents employees contractors and subcontractors;

(ii) completion of the foregoing areas in such a manner as to be accessible and usable by Subtenants and their customers for parking and loading purposes;

(iii) completion of the Building's lobby area(s), elevator cabs, if any, and all other common areas to be used by Subtenants and residential tenants, if any, and the rendering of such areas in broom clean condition, free from debris caused by or created by Developer and its agents, employees, contractors and subcontractors;

(iv) delivery of a dated certificate (AIA form G704 or equivalent form approved by the City) from the architect responsible for construction of the Building Shell stating that upon such date and in such architect's professional judgment, made in accordance with the applicable standard of care, Substantial Completion of the Building Shell and the other improvements has occurred in accordance with the definition of Substantial Completion set forth in this Agreement and in accordance with the Final Site Plan and Construction Documents, subject to punch list items;

(v) with respect to the retail areas of the Building, completion in accordance with Construction Documents to the level of "cold dark shell" so that the Developer or the applicable Subtenant can commence Subtenant buildouts;"

(vi) completion of substantially all work in the residential apartments, if any, except for punch list items, such that such units can be leased;

(vii) completion of all streetscapes, sidewalks, lighting and public spaces as required by the Final Site Plan;

(viii) delivery to Developer of all warranties and other similar documents that relate to equipment and other materials installed in the Building obtained by Developer; and

(ix) all contractors and subcontractors performing work on such phase, component or portion of the improvements have been paid in full (less any retention for punch list items);

(xi) all lien releases for such work have been executed, notarized and delivered to Developer with copies being provided to the City.

"Subtenant" shall mean a tenant under any Sublease.

"Taking" means the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from Recording a final order in condemnation or a voluntary transfer or conveyance to the condemnor. The Taking shall be considered to take place as of the later of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under Applicable Law.

"Tenant" means the Person named as Tenant in this Lease or the Person who at the time in question is the successor in interest of Tenant, whether by assignment, foreclosure or other transfer, and whether by voluntary act or by operation of law, but not including any Person claiming under any transfer which is prohibited by this Lease unless and until such transfer is approved in writing by Landlord.

"Tenant's Agents" means Tenant's agents, employees, contractors, assignees, sublessees or invitees.

"Tenant's Construction Loan" means any financing of Tenant's construction of Improvements on the Property.

"Title Exceptions" means all covenants, conditions, restrictions, easements, reservations in patents, Liens, encumbrances and other matters of record.

2. PREMISES; SUBLEASING; USE; ACCESS

2.1 Premises. In consideration of the Rent to be paid by Tenant hereunder and the mutual covenants and agreements herein contained, Landlord hereby grants and leases to Tenant, and Tenant hereby takes and leases from Landlord, effective as of the Lease Commencement Date, all of Landlord's right, title and interest in the Premises, upon and subject to the terms and conditions herein contained and the Title Exceptions. Tenant, in connection with this Lease, shall have the benefit of all easements, rights and entry and other rights that have been or may be granted and created for the benefit of (or accruing for the benefit of) Landlord or any successor or assign thereof that relate to the Premises or the Improvements.

2.2 Assignment of Development Rights Prohibited. Landlord and Tenant agree that in no event shall Tenant be permitted to "transfer" any of the Development Rights associated with the Property through assignment, easement, covenant or otherwise without the prior consent of Landlord, which consent may be granted or withheld in Landlord's sole and absolute discretion.

2.3 Subleasing and Attornment. Landlord expressly acknowledges the right of Tenant to enter into Subleases for the Premises or portions thereof on market terms. For the initial Sublease, and any subsequent Sublease, of all or a portion of the Building or other portion of the Premises, the Landlord expressly acknowledges the right of Tenant to enter into Subleases for the Premises or portions thereof on market terms consistent with the Leasing Guidelines.

2.4 Exclusive Use. During the Lease Term, Tenant shall have the exclusive right to occupy, lease, sub-lease, develop, and otherwise use the Premises subject to the terms of this Lease, the Title Exceptions, and the Development Agreement.

2.5 Landlord's Right of Access. During the Term, Tenant agrees to provide Landlord reasonable access to the Premises for purposes of confirming Tenant's compliance with its obligations hereunder, provided that such access is sought during normal business hours subject to the rights of tenants under any Subleases and provided that Landlord provides Tenant with reasonable prior written notice.

3. TERM.

3.1 Initial Term. The Lease Term shall commence on the Lease Commencement Date and expire at 12:00 o'clock Midnight, local time on last day of the twelfth (12^{th}) full calendar month of the ninety-ninth (99^{th}) year after the Rent Commencement Date (the "Initial Term"), unless sooner terminated in accordance with the terms of this Lease.

4. RENT.

4.1 Payment of Rent. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord the Rent set forth in this Section 4 without deduction, offset, prior notice or demand, in lawful money of the United States of America, at _____, or at such other place as Landlord may designate by written notice to Tenant. If and as requested by Tenant, Landlord shall provide Tenant with wiring

instructions sufficient to permit Tenant to pay the Rent by wire transfer. Tenant shall pay to Landlord an annual and monthly "Base Rent" as shown on the attached Schedule 1.

4.2 Net Lease. This Lease is intended to be a "net lease," and Tenant shall pay to Landlord, absolutely net throughout the Lease Term, the Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off whatsoever, except as otherwise provided under this Lease. Effective as of the Lease Commencement Date, Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises, which may arise or become due or payable prior to, during or after (but attributable to a period falling within) the Lease Term, and any and all of such costs, expenses, and charges shall be considered within the term "Rent" payable to Landlord hereunder, the non-payment of which shall result in Landlord having the right, but not the obligation, to exercise its remedies hereunder. Except as otherwise specifically provided in this Lease, Tenant's obligation to pay Rent hereunder accruing during the Lease Term hereof shall not terminate prior to the date definitely fixed for the expiration to the Lease Term. The parties intend that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations have been modified or terminated pursuant to an express provision of this Lease or by mutual agreement of Landlord and Tenant.

5. TAXES AND ASSESSMENTS.

5.1 Payment. Tenant shall pay all Impositions which shall during the Lease Term be made, assessed, levied or imposed upon, or become due and payable (together with any interest or penalties imposed upon the late payment thereof) in connection with, or a Lien upon, the Land, Property, the Improvements, this Lease, or personal property utilized in the operation of the Property or Improvements, as shall, from and after the Lease Commencement Date during the Lease Term, be levied, assessed or imposed upon or become due and payable or Liens upon, the Premises, or any part thereof, or any appurtenances thereto, Improvements now or hereafter located on the Premises, the leasehold estate hereby created, or any personal property located on the Premises or any part thereof, by virtue of any present or future law, order or ordinance of any Governmental Authority, to the full extent of installments falling due after the Lease Commencement Date during the Lease Term, whether belonging to or chargeable against Landlord, Tenant or any Subtenant. Tenant shall make or cause to be made all such payments directly to the Governmental Authority charged with the collection thereof before delinquency and before any fine, interest or penalties shall become due or is imposed by operation of law for nonpayment. If the law expressly permits the payment of any or all of the foregoing in installments (whether or not interest accrues on the unpaid balance), Tenant may, at its election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. If requested by Tenant, Landlord shall join Tenant in such election. No failure by any tenant under any Sublease to pay any Impositions shall relieve Tenant of its obligations to Landlord under this Article 5. The Tenant's obligations to pay any Imposition related to a period during the Lease Term shall survive the expiration of this Lease. Notwithstanding the preceding, Landlord agrees that at no time during the Lease Term shall Landlord charge any Imposition, tax, fee, levy or similar charge to or on the Premises if such Imposition, tax, fee, levy or similar charge is not charged to or on all owners or tenants of retail and/or residential real property similar to the Premises.

5.2 Contest. Subject to the rights of Subtenants under Subleases, as applicable, Tenant, at its sole cost and expense, may contest the legal validity or amount of any Imposition for which Tenant is responsible under this Lease, and may institute such proceedings with respect thereto as it considers necessary, provided that (a) nonpayment will not subject the Premises or any part thereof to any Lien, sale or other liability by reason of such nonpayment other than a notice of lis pendens, (b) such contest shall not subject Landlord to the risk of any criminal or civil liability, and (c) if such Imposition must be paid pursuant to any applicable statute, ordinance, regulation or rule as a condition to such protest and contest, Tenant shall timely pay such Imposition. If such payment is not required by any applicable statute, ordinance, regulation or rule, Tenant shall provide such security as may reasonably be required by Landlord to ensure payment of such contested Imposition, including without limitation the deposit with Landlord of the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges. Landlord will cooperate with Tenant in every reasonable respect in connection with initiating and prosecuting any and all contests of any Impositions, but without any out-of-pocket cost or expense to Landlord.

5.3 Exclusions. Tenant's obligation to pay the Impositions shall not include the following, however described: Business, income taxes or license fees levied or assessed against Landlord (except as may be specifically provided herein) or estate, succession, inheritance, transfer or similar taxes of or on Landlord.

5.4 Proof of Compliance. Upon receipt of Landlord's written request, Tenant shall furnish to Landlord copies of all bills and invoices relating to any Impositions required to be paid by Tenant hereunder, and, not less than five (5) business days before any Imposition becomes overdue, receipts or other appropriate evidence reasonably acceptable to Landlord establishing their payment or, in the case of contested Impositions, proof as to the contest and Tenant's compliance with Section 5.2.

5.5 Landlord's Right to Make Payments. If Tenant fails to pay any Imposition prior to delinquency or otherwise comply with this Article 5, then Landlord shall have the right (but not the obligation), to pay any such Imposition directly to the party to whom payment is required, in which event the amount of such Imposition, together with Landlord's reasonable costs and expenses associated with the payment thereof, shall be due and payable from Tenant upon demand, together with interest at the Default Rate from the date paid by Landlord until repaid, and any failure by Tenant to pay such amount upon demand shall constitute a default under this Lease. Any amounts owed to Landlord pursuant to this Article 5 shall be deemed "Rent".

6. USES.

6.1 Purpose. Tenant may use and permit the use of the Premises for the Permitted Use and for no other use or purpose.

6.2 As-Is. Tenant acknowledges that it has examined the Premises, is familiar with the physical condition, zoning, status of title and use that may be made of the Premises and every other matter or thing affecting or related to the Premises, and is leasing the same in its "AS

IS" condition existing on the Lease Commencement Date. Landlord has not made and does not make any representations or warranties whatsoever with respect to the Premises or otherwise with respect to this Lease except as expressly provided in Section 18.19 of this Lease. Tenant assumes all risks resulting from any defects (patent or latent) in the Premises or from any failure of the same to comply with any Applicable Law or the uses or purposes for which the same may be used or occupied.

6.3 Lawful Compliance. Throughout the Lease Term and at no expense to Landlord, Tenant shall promptly comply or cause compliance with all Applicable Laws, and with the Title Exceptions, regardless of whether such compliance is foreseen or unforeseen, ordinary or extraordinary, and regardless of whether presently within the contemplation of the parties or involving any change of governmental policy or requiring structural or extraordinary repairs, alterations or additions. Without limiting the foregoing, Tenant shall obtain all approvals, Permits, and licenses required to operate the Premises, and shall comply with any rules, regulations or requirements of any Governmental Authorities having jurisdiction over the Premises or the operation thereof. Tenant shall have the right, at its expense, to contest by appropriate legal proceedings before any tribunal having jurisdiction, whether judicial or administrative, without cost or expense to Landlord, the validity or applicability of any Applicable Law of the nature referred to herein, provided that (a) such contest will not subject the Landlord to the risk of criminal or civil penalty or (b) subject the Premises or any part thereof to any Lien, sale or other liability as a result of nonpayment or nonperformance. No abatement, diminution or reduction of the Rent or other charges required to be paid by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation, or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of any governmental or lawful authority whatsoever. In the event Landlord has reasonable basis to believe that any non-compliance by Tenant or any Subtenant with any Applicable Law will result in the forfeiture of all or any portion of the Premises or the imposition of any Lien upon the Premises, then Landlord shall have the right (but not the obligation) to, following five (5) business days' advance written notice to Tenant, remedy such non-compliance and the costs expended by Landlord in so doing shall be immediately payable by Tenant to Landlord upon demand, with interest at the Default Rate, and shall constitute additional Rent hereunder. No action taken by Landlord to remedy any non-compliance with Applicable Laws shall operate to relieve Tenant from any liability or obligation pursuant to this Section 6.3 and Landlord shall be entitled to all rights and remedies with respect to Tenant's breach of its obligations hereunder.

7. OPERATING COSTS. Tenant shall pay, or cause Subtenants under Subleases, as applicable, to pay, directly to the service providers before delinquency all Operating Costs, including, as applicable, charges for utilities and other services, water, sewer, stormwater management, gas, electricity and telephone. Tenant shall not permit any such charges to accumulate or become a Lien on the Premises. In the event Landlord has reasonable belief that any unpaid Operating Costs may become a Lien on the Premises, Landlord shall have the right (but not the obligation) to, following five (5) business days' advance written notice to Tenant, pay any such Operating Costs directly to the party to whom payment is required, in which event the amount of such Operating Costs, together with Landlord's reasonable costs and expenses associated with the payment thereof, shall be due and payable from Tenant upon demand,

together with interest at the Default Rate from the date paid by Landlord until repaid, and any failure by Tenant to pay such amount upon demand shall constitute a default under this Lease. Any amounts owed to Landlord pursuant to this Article 5 shall be deemed "Rent".

8. TENANT'S OBLIGATIONS FOR MAINTENANCE AND REPAIR. Subject to Section 9.2 hereof, throughout the Lease Term, Tenant shall or shall cause Subtenants under Subleases, at its or their sole cost and expense, keep and maintain the Premises in a clean and orderly condition free of dirt, rubbish and other obstructions. Subject to Article 9 hereof, Tenant shall keep the Premises in good and safe condition, reasonable wear and tear excepted, and shall make all necessary repairs thereto. As used in this Article 8, the term "repairs" includes all necessary replacements, renewals, alterations, additions and betterments. All repairs shall be performed promptly in a good and workmanlike manner in compliance with all Applicable Laws, Title Exceptions, Permits and all requirements of applicable Governmental Authorities, any national or local board of fire underwriters or any other body hereafter exercising functions similar to those of any of the foregoing, and in accordance with the terms of Article 9 herein. Tenant assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises. Landlord shall not be required to maintain or make any repair or alterations to, or be responsible for the cost of any alterations of or repairs to, the Premises of any nature whatsoever, structural or otherwise. Tenant hereby waives and releases all rights now or hereinafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 8.

9. DEMOLITION, CONSTRUCTION AND ALTERATIONS.

9.1 Demolition of Existing Improvements. Subject to the other conditions, requirements and obligations set forth in this Article 9, Tenant shall have the right, to demolish the Improvements on the Premises.

9.2 Right to Alter and Construct Improvements. Tenant is hereby specifically granted the right to make Alterations to the Premises and construct Improvements on the Premises (the foregoing being referenced as the "Work"), in accordance with the Final Site Plan and Construction Documents (as both terms are defined in the Development Agreement) and to demolish and make Alterations to the Improvements and build replacement Improvements on the Premises, subject to Landlord's approval, which shall not be unreasonably withheld provided, for any material Alterations, a community consultation process substantially similar to the one described in Section 3 of the Development Agreement is first undertaken. All Improvements and Alterations undertaken by Tenant, shall be performed at Tenant's sole cost, risk and expense, and constructed or caused to be constructed in compliance with all Applicable Laws, licenses, Permits and approvals. Work shall be done under the supervision of a licensed architect or a licensed professional engineer and performed in a workmanlike manner. The Tenant's right to perform any Work with respect to the Premises is subject to the following:

A. Compliance with Laws & Permits. Tenant shall not perform any Work without first obtaining, to the extent required by law, consents by any Governmental Authorities who are required to provide consent pursuant to Applicable Laws.

B. Work Within Lot Lines. No Work shall, when completed, result in Improvements located on the Premises being physically connected to any other improvement located on any adjoining property and all Improvements shall be located within the lot lines of the Premises, unless the prior written consent of Landlord has been obtained by Tenant prior to the commencement of any such Work, which Landlord consent will not be unreasonably withheld provided Work outside the lot lines of the Premises is reasonably required pursuant to a Sublease with the Takoma Park Silver Spring Co-op and approved and authorized by the owner of any such property located outside the lot lines.

C. No Mechanics' Liens. The Premises shall at all times be free of Liens for labor and materials supplied or claimed to have been supplied to the Premises and free from any encumbrances, chattel mortgages, conditional bills of sale, or security interests; provided, however, that nothing in the preceding sentence shall be deemed to preclude the placement of Leasehold Financing in accordance with Article 15 herein.

D. Diligent Completion. Tenant shall complete the Work within the timeframes for completion as provided in the Project Schedule as defined in Development Agreement and as such Project Schedule may be updated as provided by the terms of the Development Agreement. Failure to complete the Work in accordance with the Project Schedule, including, but not limited to, Finish dates and Main Tasks (as defined in the Development Agreement) shall be deemed an Event of Default entitling Landlord to exercise any of its remedies provided for pursuant to Article 16 of this Lease without the provision of any additional cure periods for Tenant as may be provided pursuant to this Lease.

E. As-Built Drawings. Tenant shall cause its contractor to maintain "as built" drawings during construction of the Improvements or Alterations. Within three (3) months after final completion of the Improvements (as determined pursuant to the agreement between Tenant and such contractor), Tenant shall deliver or cause to be delivered to Landlord two (2) complete sets of "as-built" drawings in a form reasonably acceptable to Landlord. Upon the completion of any Work adjacent to any property line of the Premises, the Tenant shall furnish a survey made by a duly licensed surveyor that there are, as a result of such Work, no encroachments on adjoining property or into any street, avenue, or sidewalk (except as approved by Landlord in accordance with Section 9.2(B)), or any other physical condition that would adversely impact Landlord's fee title to the Premises.

F. Landlord Cooperation. Landlord shall reasonably cooperate with Tenant in obtaining all required Permits and consents from Governmental Authorities and other Persons with respect to the Plans or as otherwise Tenant deems necessary in connection with the Alterations or with its development and the construction of the Improvements, provided that such cooperation shall result in no cost or liability to Landlord. Upon Landlord's request, Tenant shall provide Landlord with copies of any and all applications for zoning approvals, concept plan, preliminary plan, site plans, and plats and any other similar type applications.

9.3 Insurance and Bonding. At all times during Alterations or the construction of the Improvements, Tenant shall carry or cause to be carried those insurance coverages required by Applicable Laws and as described in Article 11 hereof. Tenant shall maintain or

cause to be maintained any payment bond(s) and performance bond(s) required by any Applicable Laws.

9.4 Liens. Tenant shall pay or cause to be paid the total cost and expenses of any Alteration and the construction of any Improvements. Tenant shall not suffer or permit to be enforced against the Premises or any part thereof any Lien arising from or in any way related to any work performed on or materials supplied with respect to the Premises. Tenant shall indemnify, defend and hold Landlord and its officials, employees, agents, boards and agencies harmless for, from and against all liability or loss of any type to the extent arising out of any work, construction or other activity in connection with the Premises, unless and to the extent such work, construction or activity is commenced by Landlord. Tenant, at its cost, either shall cause any Lien to be released or shall obtain a surety bond to discharge any such Lien within sixty (60) days after such Lien is filed against the Premises. If Tenant fails to release or bond over any Lien within such 60-day period, Landlord may, without obligation to do so, remove such Lien by any means deemed appropriate by Landlord, including payment thereof, whereupon Tenant shall pay Landlord upon demand all sums paid and expenses incurred by Landlord in connection with removing such Lien, together with interest at the Default Rate from the date paid by Landlord until repaid including, without limitation, reasonable attorneys' fees and costs, and any payments made by Landlord pursuant to this Section 9.4 shall constitute additional Rent owed by Tenant. In no event shall Landlord's payment of any Liens relieve Tenant of its liabilities and obligations pursuant to this Section 9.4.

9.5 Ownership. Subject to any Subleases and assignments in accordance with the provisions of this Lease, the Improvements and any Alterations or other additions thereto as permitted by this Lease shall be owned by Tenant or its Permitted Assignees at all times during the Lease Term. Subject to Section 9.6 below, upon the expiration or sooner termination of this Lease, without cost to Landlord: (a) possession of the Premises and all fixtures shall be surrendered and delivered to Landlord in good condition and repair, reasonable wear and tear excepted; (b) the Improvements shall become Landlord's property free and clear of all Liens and claims thereto by Tenant or any other Person other than the Title Exceptions; (c) Tenant shall indemnify, defend and hold harmless Landlord and its officials, employees, agents, boards and agencies against all liability and loss arising from any Liens and/or claims; and (d) Tenant promptly shall execute any instruments reasonably requested by Landlord to confirm ownership in and possession of the Improvements by Landlord.

9.6 Demolition upon Surrender. Following expiration of the Lease Term or earlier termination of the Lease and notwithstanding anything hereinbefore or hereinafter stated to the contrary, Tenant, shall, at the option of Landlord, remove all personal property and equipment and demolish all above grade/ground Improvements on the Premises, restore the Property to a grade/ground level (with any necessary fill being of a compacted grade standard sufficient to support the construction of new improvements built to the maximum height limit permitted under the current zoning or other governmental regulatory authority governing development) within six (6) months following the end of the Lease Term.

10. DAMAGE OR DESTRUCTION. If during the Lease Term any Improvements constituting a part of the Premises are damaged or destroyed by a casualty, then, Tenant shall promptly give Landlord notice of such damage or destruction and Tenant shall restore, repair, replace, rebuild and alter the same to as good or better a condition as existed prior to such casualty (such work being referenced as the "Restoration"). The foregoing notwithstanding, provided that Tenant has maintained all the insurance required under this Lease, then Tenant's obligation to perform the Restoration shall be limited to the extent of available insurance proceeds. No destruction of or damage to the Premises or termination by any Subtenant under any Sublease shall permit Tenant to surrender this Lease or relieve Tenant from its liability hereunder, and Tenant waives any right now or hereafter conferred upon it, by statute or otherwise, to quit or surrender this Lease or the Premises or any part thereof or to any suspension, diminution, abatement or reduction of Rent on account of any such destruction or damage.

11. INSURANCE. At all times during the Term of the Lease, Tenant, at its sole expense, shall procure and maintain or cause to be procured and maintained by Subtenants, as applicable, the following insurance coverages:

11.1 Fire, Property Damage, and Extended Coverage. Coverage insuring the Improvements constituting a part of the Premises against loss or damage by fire, windstorm, tornado, hail and all other hazards covered by the "special form or direct damage" forms or endorsements (collectively "Property Insurance") including, without limitation, boiler and machinery, coverage for loss or damage by water, flood and subsidence, and vandalism and malicious mischief coverage. The policy shall also include building ordinance and demolition with limits of not less than $1,000,000.00, which shall be reviewed and increased every five years if necessary dependent on then-current economic factors. The amount of the Property Insurance shall be in the amount set forth in the "replacement cost" endorsement to the policy in question, but not less than the full replacement value of the Improvements owned by Tenant (including any additional costs which may be required to bring the Improvements into compliance within then Applicable Laws).

11.2 Builder's Risk Coverage. During any construction on or about the Premises, Tenant shall carry (or cause to be carried) All Risk Builders Risk Insurance with limits equal to one hundred percent (100%) of the initial budget for construction of the Improvements, and any amendment to such budget that affects the cost of construction, on a "replacement cost" basis (determined in accordance with prevailing industry standards), including vandalism and malicious mischief, covering Improvements in place and all material and equipment at the job site, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractors or subcontractors' employees. To the extent the liability policies required pursuant to Section 11.3 below do not already contain such coverages, during period of construction, Tenant's liability policies shall be amended to include liability coverage for bodily injury and property damage during construction, including personal injury, completed operations, products liability, broad form property damage, independent contractor, underground hazards, explosion, excavation and collapse, and contractual liability and shall include Landlord and its officials, employees, agents, boards and agencies, and Tenant as additional insureds. Each insurance policy obtained under this Section 11.2 shall, to the extent obtainable, contain

provisions that no act of negligence of Tenant or any Subtenant or occupant of the Premises or its or their contractors or subcontractors or their agents or employees, which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance.

11.3 Liability Insurance. Tenant shall maintain and shall cause Tenant's Agents, and the Subtenants under the Subleases, as applicable, to maintain Comprehensive General liability insurance ("**Liability Insurance**") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Three Million Dollars ($3,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars ($5,000,000.00) from the aggregate of all occurrences within each policy year, with excess coverage or umbrella coverage of at least Seven Million Dollars ($7,000,000.00) for the Premises, Coverage shall include, but shall not be limited to, coverage for bodily injury, loss of life or property damage occurring in or about the Improvements and on any portion of the streets and sidewalks adjacent thereto or anywhere in or about the Premises. Coverage shall also expressly cover Tenant's contractual indemnification obligations pursuant to this Lease. The amounts of such coverages shall be reviewed and adjusted (but not below the minimums herein specified) from time to time during the Lease Term (but not more often than once each five years) as may be necessary to reflect changes in the use of the Premises and to maintain a level of coverage as reasonably required by Landlord.

11.4 Business Interruption Insurance. From and after the Lease Commencement Date, Business Income Insurance against loss of rent or rental value due to fire and other risks embraced by all special causes of loss endorsements in an amount sufficient to prevent any loss of Rent payable to Landlord for the period of twenty-four (24) months following the occurrence of the insured casualty.

11.5 Commercial Auto Insurance. Commercial automobile insurance with limits of not less than One Million Dollars ($1,000,000) per any one occurrence per any one year and Three Million Dollars ($3,000,000.00) from the aggregate of all occurrences within each policy year.

11.6 Workers' Compensation. Workers' compensation providing statutory benefits for all persons employed by Tenant at or in connection with the Leased Premises.

11.7 Policy Requirements. All required insurance shall be issued by financially sound, reputable and responsible insurance companies licensed to do business in the State of Maryland and have an A.M. Best rating of at least A-/VI. All such insurance shall be in such form and with such provisions and with such deductibles as are generally considered standard provisions for the type of insurance involved and reasonably acceptable to Landlord. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in a forfeiture of the insurance, (b) the insurer waives the right of recovery and/or subrogation against Landlord, (c) the policies are primary and noncontributing with any insurance that may be carried by Landlord, and (d) the policies cannot be cancelled or materially changed except after thirty (30) days' prior written notice by the insurer to Landlord. All

policies shall name Landlord and its officials, employees, agents, boards and agencies as additional insureds thereunder. Tenant shall furnish Landlord with copies of all policies or certificates evidencing coverage at least fifteen (15) days prior to the issuance or renewal date of such policies or furnish to Landlord a binder evidencing such coverage(s) until the policy is issued, at which point a copy of the issued policy will be provided to Landlord. A Certificate of Insurance shall be provided on the Lease Commencement Date by Tenant to the Landlord with respect to the Liability Insurance, Casualty Insurance and Worker's Compensation Insurance described in Section 11.1 above. Any insurance required to be carried by either party may be carried under a blanket policy covering the Leased Premises and other locations, with the Leased Premises specifically scheduled therein provided that the coverage afforded to Landlord shall not be reduced or diminished by reason of the use of such blanket policies of insurance. No acceptance or approval of any insurance agreement or agreements shall (a) relieve or release or be construed to relieve or release the Tenant or any other Person from any liability, duty, or obligation assumed by, or imposed upon it or (b) impose any obligation upon the additional insured(s)/loss payees.

11.8 Failure to Maintain Insurance; Proof of Compliance. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been obtained, is in force and has been paid for, Landlord shall have the right, at Landlord's option to procure and maintain such insurance upon five (5) days' prior written notice to Tenant (unless Tenant's insurance has or will expire prior to the expiration of such 30-day period, in which event no prior notice shall be required). The premiums paid by Landlord shall be due and payable from Tenant upon demand, together with interest at the Default Rate from the date paid by Landlord until repaid, and any failure by Tenant to pay such amount upon demand shall constitute a default under this Lease. Landlord shall give notice of the payment of any of such premiums, stating the amounts paid and the name of the insurer or insurers. Tenant agrees that payment by Landlord of any such premium shall not be deemed to waive or release the obligation of Tenant to make payment thereof or any of Landlord's other rights hereunder. Any amounts owed to Landlord pursuant to this Article 11 shall be deemed "Rent".

11.9 Waiver of Subrogation. Tenant hereby waives any and all rights of recovery against Landlord or against its officers, directors, partners, members, trustees, employees and shareholders, on account of loss or damage occasioned by Tenant or its property or any property of others under its control to the extent that such loss or damage is insured under any insurance required to be maintained pursuant to this Lease. Tenant will, upon obtaining the respective policies of insurance required under this Lease, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease and obtain from the respective carriers an endorsement waiving any right of subrogation in favor of the insurer.

12. INDEMNITY. Tenant shall indemnify, defend and hold Landlord its officials, employees, agents, boards and agencies harmless for, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable costs of engineers, architects and similar experts and attorneys' fees) in any way and to the extent arising from: (a) the development, use or occupancy of the Premises, including the use or occupancy of the Premises by Tenant or Subtenants and/or Tenant's or any Subtenant's invitees

or licensees; (b) the conduct of Tenant's or any Subtenant's business thereon; (c) any activity, work or thing done, performed or suffered on or about the Premises by Tenant or Tenant's Agents, including without limitation any Work performed pursuant to Article 9 hereof; (d) any breach or default on Tenant's part in the performance of any provision of this Lease; (e) any negligent act or omission of Tenant or Tenant's Agents, Subtenants, licensees, invitees, or employees; (f) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or obligations contained in this Lease on Tenant's part to be kept, observed or performed; (g) any tax or fee attributable to the execution, delivery or recording of this Lease, or any amendment or memorandum thereof, and (h) any and all other claims of any kind concerning or arising from the Premises and from and against all costs, attorneys' fees, losses, expenses and liabilities reasonably incurred in connection with any such claims and any action or proceeding brought thereon; provided, that the foregoing shall exclude any claims and other liabilities to the extent deriving from the intentional or negligent act or omission of Landlord or its agents, employees, contractors, or assignees. This indemnity shall survive the expiration or prior termination of the Lease. In the event any action or proceeding is brought against Landlord with respect to which Landlord or its officials, employees, agents, boards and agencies is entitled to be indemnified by Tenant pursuant to this Article 12, then Tenant shall, upon notice from Landlord, at Tenant's sole cost and expense, resist or defend such action or proceeding by counsel approved by Landlord in writing; provided, however, that no approval of counsel shall be required in any instance where the claim is being defended by counsel of an insurance carrier obligated so to resist or defend such claim.

13. CONDEMNATION.

13.1 Total Taking. In the event of a Taking of the entire Premises, including the entire fee simple title to the Premises, as well as the right, title and interest of Tenant therein, then the rights and obligations of the parties hereunder (except rights and obligations arising prior to such Taking and except rights and obligations provided in this Section), this Lease shall terminate as of the date of such Taking; the parties hereby agree to look solely to the condemnation awards or proceeds for compensation in the proportions hereinafter provided for their respective interests in the Premises and Improvements as such interest is set forth in Section 13.3 hereof.

13.2 Partial Taking. In the event of a partial Taking where the portion of the Premises and Improvements affected can be adequately restored, repaired and/or reconstructed to the same usefulness, design, construction and economic feasibility as existed immediately before the Taking (as determined in the reasonable discretion of Tenant), this Lease shall not terminate pursuant to the provisions of Section 13.1, and Tenant shall be entitled to receive an equitable reduction in the Rent, effective as of the day of such partial Taking, such equitable reduction to reflect the impairment of the value of the Premises resulting from such partial Taking.

13.3 Allocation of Award. In the event of a Taking as described in Section 13.1, by a Governmental Authority other than the City of Takoma Park, Maryland, the net Taking award or proceeds, including damages or interest (after deduction of all expenses, including fees of attorneys, appraisers and expert witnesses), shall be paid as follows in the following order of priority (and, in the event of a Taking as described in Section 13.2, the

apportionment of the Taking award or proceeds shall take into account these priorities to the extent applicable):

A. Securing of Property. To secure and make safe the Land and the Premises to the extent necessary or required by Applicable Law.

B. Compensation to Landlord. To Landlord in an amount equal to the fair market value of the Land.

C. Compensation to Tenant's Lender. To any Leasehold Lender, the balance due on any loan secured by its Leasehold Mortgage.

D. Compensation to Tenant. The balance shall be distributed to Tenant. Nothing in this Article 13 shall diminish Tenant's rights to receive a separate award for the value of fixtures, personal property and relocation costs.

In the event of a Taking in Section 13.1 by the City of Takoma Park, Maryland, the net Taking award or proceeds, including damages or interest (after deduction of all expenses, including fees of attorneys, appraisers and expert witnesses) shall be paid in the order of priority above, except that priority B shall be excluded (and, in the event of a Taking by the City of Takoma Park, Maryland as described in Section 13.2, the apportionment of the Taking award or proceeds shall take into account these priorities to the extent applicable except that priority B shall be excluded).

14. ASSIGNMENT OF LEASEHOLD ESTATE. Tenant may not assign this Lease without Landlord's consent, which may be withheld in Landlord's sole and absolute discretion, except that no consent shall be required to assign to an Affiliate of NDC Takoma Junction, LLC, a Maryland limited liability company or The Neighborhood Development Company, L.L.C., a District of Columbia limited liability company provided Landlord is notified of such assignment, no such assignment shall be deemed to release Tenant or Guarantor from continuing liability throughout the Lease Term, except that Tenant shall be released from all obligations under the Lease accruing after a permissible assignment hereunder provided the assignee assumes and agrees to be bound by all provisions of the Lease; and provided that the assignee has a tangible net worth (exclusive of goodwill) equal or greater than $_____ as of the date of the assignment, evidence of such tangible net worth to be delivered to Landlord by Tenant together with Tenant's request for or notice of assignment as required hereunder and the assignee satisfies the standards for contractors with the City of Takoma Park, Maryland.

15. FINANCING

15.1 Landlord Financing. This Lease, including any modification or amendment hereof, shall unconditionally and at all times be subordinate to the Lien of any Mortgage now or hereafter granted by Landlord encumbering Landlord's fee interests in the Property and its Reversionary Interest in the Improvements, provided that any such Landlord Mortgagee executes a non-disturbance and recognition agreement with Tenant recognizing Tenant's leasehold interest and right of possession of the Premises so long as Tenant is not in default under the terms of the Lease beyond any applicable notice and cure period in a form

reasonably and mutually acceptable to Landlord's Mortgagee, Landlord and Tenant. Further, the Lender under any such fee Mortgage shall not be entitled to receive any casualty or condemnation proceeds, except for those proceeds to which Landlord is expressly entitled pursuant to the terms of this Lease and which Landlord expressly assigns to Landlord's Lender. Tenant shall not be named or joined in any action or proceeding to foreclose the Lien of such Mortgage.

15.2 Tenant's Financing. Tenant shall have the right during the Term to subject the Improvements and Tenant's leasehold interest in the Premises to one or more Tenant Mortgages, or to any one or more extensions, modifications or renewals or replacements of a Tenant Mortgage (but not more than one Tenant Mortgage at a time), however, subject to the following:

A. Lien Limited to Tenant's Interests. Each Tenant Mortgage or other security instrument acquired by the Lender shall be a Lien only on Tenant's interests in and to this Lease and the leasehold estate and shall not be a Lien on Landlord's fee interest in the Premises or Landlord's Reversionary Interest in the Improvements. Each Tenant Mortgage shall be subject to the terms and provisions of this Lease, and the Tenant's Lender, or anyone claiming by, through or under the same, shall not, by virtue thereof, acquire any greater rights hereunder than Tenant has under this Lease. Under no circumstances shall any Tenant Mortgage require Landlord to subordinate its fee interest in the Premises or its Reversionary Interest in the Improvements.

B. No Liability for Landlord. Landlord shall not be liable for the payment of the sum secured by such Tenant Mortgage, nor for any expenses in connection with the same, and neither such Tenant Mortgage nor any instrument collateral thereto shall contain any covenant or other obligation on Landlord's part to pay such debt, or any part thereof, or to take any affirmative action of any kind whatsoever or to perform or observe any obligation or agreement thereunder; and

C. Obligation to Deliver Lender Default Notices. (i) The Tenant Mortgage shall by its terms require the Lender to deliver copies of default notices to Landlord simultaneously upon mailing to Tenant and shall grant to Landlord the right to cure any default if Tenant fails to do so within the greater of: (i) 30 days following the giving of such notice; or (ii) such time (if any) as shall, pursuant to the terms of the Tenant Mortgage or other documents, be given to Landlord to cure any such default. Neither Landlord's right to cure any such default, nor any exercise of such a right by Landlord, shall constitute an assumption of liability by Landlord under the Tenant Mortgage or any document executed in connection therewith. Landlord shall deliver copies of default notices to a Tenant Lender simultaneously upon delivery of such notice to Tenant and shall grant to Tenant Lender the right to cure such default within thirty (30) days following the giving of such notice. Neither Tenant Lender's right to cure any such default, nor any exercise of such a right by Tenant Lender, shall constitute an assumption of liability by Tenant Lender under this Lease or any document executed in connection therewith.

16. DEFAULT AND REMEDIES.

16.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default by Tenant under this Lease:

A. Monetary Default. If Tenant fails to pay (i) the Rent or any other sum payable pursuant to this Lease within seven (7) days after the date such payment is due (in the event of any scheduled payment such as the payment of Rent as contemplated in Article 2 hereof) or (ii) any unscheduled Rent or other amount within ten business (10) days after Tenant receives written notice from Landlord that any such amount is due and payable (either of (i) or (ii) being considered a "Monetary Default" for purposes of this Lease);

B. Non-Monetary Default. If Tenant fails to observe or perform any of the other obligations, covenants or agreements contained in this Lease to be observed or performed by Tenant which cannot be cured solely by the payment of money (such instance being known as a "Non-Monetary Default"), and in the event of a Non-Monetary Default that is susceptible of cure, such Non-Monetary Default is not cured within thirty (30) days after the Tenant receives written notice of such Non-Monetary Default; provided that if such Non-Monetary Default is of a type that cannot be cured or corrected by Tenant within such thirty (30) day period, Tenant shall not be in default if Tenant timely commences a cure within such thirty (30) day period and diligently pursues the same to completion, but in no event shall such cure take longer than 6 months; or

C. Bankruptcy Event. The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for liquidation or reorganization or rehabilitation or arrangement under any law relating to bankruptcy whether now existing or hereafter enacted; the adjudication of Tenant or any guarantor as a bankrupt or insolvent; the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days after the occurrence thereof; the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days after the occurrence thereof.

16.2 Cumulative Nature of Landlord's Remedies. Landlord shall have all remedies hereinafter set forth in this Article 16 if Tenant commits a default. These remedies are not exclusive but they are cumulative and in addition to any remedies now or later allowed by law.

16.3 Landlord's Remedies. Except as limited by Applicable Law in the event of Tenant's default under this Lease, Landlord shall have the right, at Landlord's option, in addition to and not exclusive of any other remedy Landlord may have under this Lease, without any further demand or notice, to resort to one or more of the following: (a) declare this Lease at an end and terminated as of the date specified in such notice, which shall be at least ten (10) days after the giving of such notice; (b) sue for rent or any other sum due Landlord under this Lease as the same becomes due; (c) Intentionally Deleted; (d) have a receiver appointed to collect rent under the Subleases, as applicable; and (e) continue this Lease in effect and relet the Premises or any part thereof, as the agent and for the account of Tenant, on such terms and conditions as

Landlord deems advisable, in which event the rents received from such reletting shall be applied first to the expenses of such reletting and collection, including necessary renovation and alterations of the Premises, reasonable attorneys' fees, and any real estate commissions paid, and, thereafter toward payment of all sums due or to become due Landlord hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly, notwithstanding Landlord may have received rent in excess of the rents stipulated in this Lease in prior or subsequent months, and Landlord may bring an action therefor as such monthly deficiency may arise. Any re-entry shall be allowed by Tenant without hindrance and interference, and Landlord shall not be liable in damages for any such reasonable re-entry or be guilty of trespass or forcible entry. Notwithstanding the foregoing, if Landlord elects any one or more remedies granted above, Landlord shall have the right to elect one or more other remedies at any time or times thereafter. No action of Landlord shall be construed as an election to terminate this Lease unless written notice of such intention is given by Landlord to Tenant.

16.4 Landlord's Right to Cure Tenant's Default. Except as limited by Applicable Law, if Tenant fails to pay any amount when due or perform any act required under this Lease, Landlord may, but shall not be obligated to, pay such amount or perform such obligation at any time after ten (10) days written notice to Tenant. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be considered Rent hereunder due immediately from Tenant to Landlord at the time the sum is paid, and, if reimbursed by Tenant at a later date, shall bear interest at the Default Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant.

16.5 Interest on Unpaid Rent. Rent and other sums payable by Tenant under this Lease which are not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the Default Rate.

16.6 Late Charge. Tenant acknowledges that late payment of the Rent or any other sum required by this Lease to be paid by Tenant to Landlord will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Tenant is not received by Landlord within seven (7) calendar days after its due date (in the event of a scheduled payment pursuant to Section 16.1(A)(i) or ten (10 business days following written notice from Landlord with respect to an unscheduled payment pursuant to Section 16.1(A)(ii)), Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord. Notwithstanding anything to the contrary herein, Landlord shall give Tenant notice of non-payment and five (5) days from Tenant's receipt of such notice to cure any such non-payment twice in any twelve (12) month period before assessing any late charge.

16.7 Landlord's Rights of Re-entry and to Relet; Damages.

A. Right to Possession. Except as limited by Applicable Law upon any expiration or termination of the this Lease, Tenant shall quit and peacefully surrender the Premises to Landlord and Landlord, upon or at any time after any such expiration or termination, may without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceeding ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income of and from the same.

B. Right to Relet. Except as limited by Applicable Law, Landlord shall also have the right (but not the obligation) to relet the Premises or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) and on such conditions (including any concessions of free rent or other incentives) as Landlord, in its sole discretion, may determine and may collect and receive the rents therefor. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

C. No Release of Tenant. No such expiration or termination of this Lease shall relieve Tenant of its liabilities and obligations under this Lease, and such liabilities and obligations shall survive any such expiration or termination. Except as limited by Applicable Law, in the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord upon demand a sum equal to the amount in arrears at the time of such expiration or termination of Rent and of all other sums which Tenant is required to pay under the Lease as the same become due. After such expiration or termination, Tenant, until the end of what would have been the Lease Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default (a) the equivalent of the amount of such Rent as the same would become due if this Lease were still in effect, less (b) the net proceeds of any reletting effected pursuant to the provisions of Article 16, after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting period.

D. Waiver of Notice of Reentry. Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant (including but not limited to any Tenant's Lender or other creditor) also waives any and all right of redemption or re-entry or re-possession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of entry, re-entry or re-possession by Landlord or in case of any expiration or termination of this Lease. Landlord and Tenant, so far as permitted by law, hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of

Landlord and Tenant, Tenant's use or occupancy of said premises or any claim of injury or damage. The terms "enter," "re-enter,""entry" or "re-entry," as used in this Lease are not restricted to their technical legal meaning.

16.8 Landlord's Default. If Landlord defaults in performing its obligations under this Lease, and such default continues for thirty (30) calendar days after written notice of breach is given by Tenant to Landlord, Tenant may exercise all remedies available at law or in equity except that Tenant may only terminate this Lease by judicial means; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default hereunder if Landlord commences performance within such thirty-day period and diligently proceeds in completion of such obligation.

16.9 Waiver. No failure by a party to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon the default thereof, and no acceptance of full or partial Rent during the continuance of any such default, shall constitute a waiver of any such default or of such provision. No provision of this Lease to be performed or observed by a party and no default thereof shall be waived, altered or modified except by written instrument executed by the non-defaulting party. No waiver of any default shall affect or alter this Lease but each and every provision of this Lease shall remain and continue in full force and effect with respect to any other existing or subsequent default thereof.

16.10 In no event shall either Landlord or Tenant be liable for special, exemplary, punitive, incidental, indirect or consequential damages resulting from any breach of this Lease or otherwise.

17. ENVIRONMENTAL PROVISIONS.

17.1 Definitions.

A. "Hazardous Materials." As used in this Lease, the term "Hazardous Material[s]" means any oil, flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials including, without limitation, any substances that pose a hazard to the Premises or to persons on or about the Premises and any substances defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "extremely hazardous waste," "restricted hazardous waste," "medical waste," biohazardous medical waste," or words of similar import, now or subsequently regulated in any way under applicable federal, state or local laws or regulations, including without limitation, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos in any form, PCBs, urea formaldehyde foam insulation, transformers or other equipment containing dielectric fluid, levels of polychlorinated biphenyls, or radon gas, and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

B. "Environmental Laws." As used herein, the term "Environmental Law[s]" means any one or all of the following: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.); the Resource Conservation Act and Recovery Act as amended (42 U.S.C. §§ 6901 et seq.); the Safe Drinking Water Act as amended (42 U.S.C. §§ 300f et seq.); the Clean Water Act as amended (33 U.S.C. §§ 1251 et seq.); the Clean Air Act as amended (42 U.S.C. §§ 7401 et seq.); the Toxic Substances Control Act as amended (15 U.S.C. §§ 135 et seq.); the Solid Waste Disposal Act as amended (42 U.S.C. §§ 3251 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.); the provisions of [the Maryland Code]; the regulations promulgated under any of the foregoing; and all other laws, regulations, ordinances, standards, policies, and guidelines now in effect or hereinafter enacted by any governmental entity (whether local, state or federal) having jurisdiction or regulatory authority over the Premises or over the activities conducted therein and which deal with the regulation or protection of human health, industrial hygiene or the environment, including the soil, subsurface soil, ambient air, groundwater, surface water, and land use.

C. "Énvironmental Activities." As used herein, the term "Environmental Activity[ies]" means any generation, manufacture, production, pumping, bringing upon, use, storage, treatment, release, discharge, escaping, emitting, leaching, disposal or transportation of Hazardous Materials.

17.2 Prohibition on Hazardous Materials. Except as specifically provided in Section 17.3 below, Tenant shall not cause or permit any Environmental Activities in, on or about the Premises in violation of Environmental Laws by Tenant or Tenant's Agents without the prior written consent of Landlord. Landlord shall be entitled to take into account such factors or facts as Landlord may reasonably determine to be relevant in determining whether to consent to Tenant's proposed Environmental Activities and Landlord may attach conditions to any such consent if such conditions are reasonably necessary to protect Landlord's interests in avoiding potential liability upon Landlord or damage to Landlord's property arising from any Environmental Activity by Tenant or Tenant's Agents.

17.3 Exception to Prohibition. Notwithstanding the prohibition set forth in Section 17.2 above, but subject to Tenant's covenant to comply with all Environmental Laws and with the other provisions of this Section 17, Tenant may bring upon, keep, use and generate in the Premises (but not outside the Premises) (i) general office supplies used in the ordinary course of business, such as copier toner, liquid paper, glue, ink, and janitorial supplies typically used in commercial and residential premises so long as all such supplies are used in the manner for which they were designed and in such amounts as may be normal in the operation of a similarly situated commercial building, and (ii) those Hazardous Materials, if any, described on a separate list to be approved by Landlord and initialed by Landlord and Tenant, which list shall include a description of the handling, storage, use and disposal procedures to be utilized by Tenant with respect thereto.

17.4 Compliance with Environmental Laws. Tenant shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of,

any Environmental Laws. All Tenant's activities at the Premises shall be in accordance with all Environmental Laws. Additionally, Tenant shall obtain any and all necessary Permits for Tenant's activities at the Premises. Tenant's obligations and liabilities under this Section 17 shall continue so long as Landlord or its successors and assigns bears any liability or responsibility under the Environmental Laws for any action that occurs on the Premises during the term of this Lease.

17.5 Environmental Notices. Tenant shall immediately notify Landlord of, and upon Landlord's request shall provide Landlord with copies of, the following:

A. Any correspondence, communication or notice, oral or written, to or from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operations on the Premises, including, without limitation, notices of violation, notices to comply and citations;

B. Any reports filed by Tenant pursuant to any Environmental Law or self-reporting requirements;

C. Any Permits and permit applications; and

D. Any change in the operations on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws; provided, however, that any change in use is subject to Section 6.1.

Tenant shall also notify the Landlord of the release of any Hazardous Material in, on, under, about or above the Premises, the Building, or the Property.

17.6 Environmental Indemnity. Without limiting the provisions of Article 12 of this Lease, Tenant shall protect, indemnify, defend (with counsel satisfactory to Landlord) and hold harmless Landlord and its officials, employees, agents, boards and agencies and their respective successors and assigns for, from and against any and all losses, damages, claims, costs, expenses, penalties, fines and liabilities of any kind (including, without limitation, the cost of any investigation, remediation and cleanup, and attorneys' fees) attributable to (i) any Environmental Activity in the Building or Premises undertaken or committed during the Term of this Lease, (ii) any remedial or clean-up work undertaken by or for Tenant in connection with Environmental Activities or compliance with Environmental Laws, or (iii) the breach by Tenant of any of its obligations and covenants set forth in this Section 17. Landlord shall have the right but not the obligation to join and participate in, any legal proceedings initiated in connection with the Environmental Activities of Tenant or Tenant's Agents. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Premises or any portion of the Building by a Hazardous Material. Any costs or expenses incurred by Landlord for which Tenant is responsible under this Section 17 or for which Tenant has indemnified Landlord or its officials, employees, agents, boards and agencies shall be reimbursed by Tenant on demand, as additional Rent and with interest thereon at the Default Rate. This indemnity shall survive the termination of this Lease. Notwithstanding anything contained in this Section 17, Tenant shall not be responsible for, or, by

executing this Lease, assume liability for any Environmental Activity occurring prior to the date of this Lease or after Tenant's surrender of the Premises and performance of any required demolition under the Lease, and the indemnity set forth in this Section shall exclude such matters.

18. GENERAL PROVISIONS.

18.1 Holding Over. No holding over by Tenant after the Term of this Lease shall operate to extend the Lease. In the event of any unauthorized holding over, Tenant shall indemnify Landlord against all claims for damages by any other lessee to whom Landlord may have leased all or any part of the Premises effective upon the termination of this Lease. Any holding over without the consent of Landlord in writing shall thereafter constitute this Lease a lease from month to month with a Rent equal to one hundred fifty percent (150%) of the Rent then in effect. No right to extend the Lease, enter into any Leasehold Financing, right to purchase or other special rights granted to Tenant shall apply during any holdover period.

18.2 Real Estate Brokerage. Each party represents that it has not had dealings with any real estate broker, finder or other person with respect to this Lease. Each party shall indemnify and hold harmless the other party for, from and against all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person, with whom the other party has or purportedly has dealt. Tenant acknowledges that no broker or agent shall have the right to make any representation or warranty on behalf of Landlord.

18.3 Estoppel Certificates. Upon twenty (20) days' prior written notice from either party or from any Lender, from time to time, each party agrees to execute, acknowledge and deliver, a statement in writing certifying (a) whether this Lease has been modified (and, if there have been modifications, identifying the same by the date thereof and specifying the nature thereof); (b) whether any Notice of Default or Notice of Termination of this Lease has been given to Tenant; (c) whether to the knowledge of Landlord or Tenant any Event of Tenant's Default or Landlord Default, as applicable, exists hereunder; (d) whether Landlord/Tenant has any specific knowledge of any claims against Landlord/Tenant hereunder (as applicable); (e) the Effective Date, the Lease Commencement Date, the Term, the then-current amount of Rent being charged to and owed by Tenant, and the date to which such rent has been paid by Tenant; (f) whether this Lease is in full force and effect and whether to the best of Landlord's/Tenant's knowledge there are no conditions existing which, with the passage of time or the giving of notice or both, would constitute an Event of Tenant's Default/Landlord's Default (as applicable); (g) whether the contemplated transfer or financing, if any, does not constitute an Event of Tenant's Default/Landlord's Default (as applicable) under this Lease and whether any consent of the party so certifying is required for such transfer or financing; and (h) such additional matters as may be reasonably requested.

18.4 WAIVER OF JURY TRIAL. LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER OF THEM AGAINST THE OTHER OR ON ANY CLAIM, CROSS-CLAIM OR COUNTERCLAIM IN RESPECT THEREOF ON ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LANDLORD AND

TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM, INJURY OR DAMAGE UNDER OR IN CONNECTION WITH THIS LEASE.

18.5 Attorneys' Fees. If either party files any action or brings or is brought into any proceeding against or involving the other party arising out of this Lease, the Premises, or for the declaration of any rights relating thereto, the party entitled to recover court costs from the other shall be entitled to reasonable attorneys' fees as part of such costs as determined by the decisionmaker in such proceeding.

18.6 Recorded Lease. This Lease shall not be recorded but concurrently with the Effective Date (or at a later date at Tenant's option) the parties shall execute and Record the Memorandum The parties shall also execute in recordable form additional memoranda reflecting any other date or matter pertaining to this Lease reasonably requested by Landlord or Tenant. All costs of recording such memoranda shall be borne by Tenant unless Landlord has requested additional memoranda to be filed in which event such filing will be at Landlord's cost. All transfer and recordation charges, however characterized, due upon the Recording shall be paid by Tenant.

18.7 No Partnership. Landlord shall not in any way or for any purpose be deemed a partner, joint venturer or member of any joint enterprise with Tenant, nor shall Tenant be deemed the employee or agent of Landlord for any purpose.

18.8 Successors. Subject to the provisions of Section 14, each and every provision of this Lease shall bind and shall inure to the benefit of the parties hereto and their successors. The term "successors" is used herein in its broadest possible meaning and includes every Person acquiring or succeeding to any interest in this Lease or the Premises or of Landlord or Tenant herein, whether such succession results from the act of a party in interest, occurs by operation of law, or as the effect of the operation of law together with the act or omission of such party.

18.9 Notices. All notices, approvals, and other communications required pursuant to the terms of this Lease shall be in writing and shall be deemed duly given if delivered (i) by email at the record email address of the other party, (ii) by hand, (iii) by same day or overnight courier service, or (iv) by first class U.S. mail to the parties at the following addresses (or to such other person or address as either party shall designate by written notice to the other). All written notices, approvals, or other communications given under this Lease shall be considered given on the date of email transmission, hand delivery, courier delivery, or deposit in the United States mail. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

If to the City:

Suzanne R. Ludlow, City Manager
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Phone: (301) 891-7229; fax (301) 270-8794
E-mail: SuzanneL@takomaparkmd.gov

With a copy to:

Douglas M. Bregman, Esq,
Bregman, Berbert, Schwartz & Gilday, LLC
7315 Wisconsin Avenue
Suite 800 West
Bethesda, Maryland 20814
(301) 656-2707; (301) 961-6525
dbregman@bregmanlaw.com

and

Susan Silber, Esq.
Silber, Perlman, Sigman & Tilev, P.A.
6930 Carroll Avenue, Suite 610
Takoma Park, Maryland 20912
(301) 891-2200; fax (301) 891-2206
Silber@sp-law.com

If to the Developer:

Adrian G. Washington, CEO
Neighborhood Development Company, L.L.C.
3232 Georgia Avenue, NW, Suite 100, Washington, DC 20010
Phone (202) 722-6002, ext. 2211; fax (202) 722-6509
E-mail: AWashington@neighborhooddevelopment.com

With a copy to:

Joel F. Bonder, Esq.
JF Bonder PLLC
3610 Livingston Street, NW
Washington, DC 20015
Phone: (301) 529-1422
Email: jbonder@jfbonder.com

18.10 No Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided to be paid shall be deemed to be other than on account of the earliest Rent due and payable under this Lease, nor shall any endorsement or

statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, unless expressly agreed to, in writing, by Landlord. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this lease.

18.11 Time of Essence. Time is of the essence of this Lease and each and all of its provisions.

18.12 Severability. The unenforceability, invalidity, or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

18.13 Entry. Landlord shall have the right at all times during the Lease Term to enter upon the Premises and examine or inspect the same for any purpose; provided, that unless emergency circumstances require otherwise, any such entry shall be at reasonable times upon reasonable advance notice to Tenant and in manner not unreasonably interfering with the operation of the Premises and Subtenants under Subleases.

18.14 Quiet Enjoyment. If Tenant timely pays all sums due hereunder and performs all provisions hereof in all material respects, Tenant shall peaceably and quietly have, hold and enjoy the Premises throughout the Lease Term.

18.15 Interpretation. The captions by which the paragraphs of this Lease are identified and the main headings under which particular paragraphs are placed are for convenience only and shall have no effect upon the interpretation of this Lease. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular, and the neuter gender shall include the masculine and feminine genders. If either party consists of more than one person, each person shall be jointly and severally liable hereunder. If any provision of this Lease shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby. Both parties to this Lease are represented by counsel and this Lease reflects input from both parties. Therefore, in the event of a dispute over, or any ambiguity of, the terms of this Lease, the parties agree that common law rules of construction in favor of one party or against another party shall not apply.

18.16 Disputes & Choice of Law. This Lease shall be governed and construed in accordance with Maryland law, without giving effect to choice of law principles. Landlord and Tenant hereby consent and submit to the jurisdiction of the Circuit Court of Montgomery County, Maryland for all purposes in connection with the resolution of controversies or disputes hereunder.

18.17 Transfer of Landlord's Interest. Subject to Tenant's right under Section 19 hereunder, in the event of any sale, conveyance, assignment or other transfer by Landlord of its interest in the Premises, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the successor in interest of Landlord in and to this Lease with respect to liability for violations of covenants and conditions occurring after the date of transfer

18.18 Entire Instrument. This is an integrated Lease which contains all of the understandings of the parties with respect to the Premises and supersedes all agreements heretofore or contemporaneously made by the parties with respect to the matters contained herein. This Lease cannot be modified in any respect except by a writing executed by Landlord and Tenant. The parties agree that the submission of an unsigned version of this Lease by Landlord to Tenant shall not constitute an offer to lease the Premises, it being understood and agreed that only a fully-executed Lease shall be binding on either of the parties hereto.

18.19 Representations. Landlord and Tenant each represent and warrant to the other (understanding that such representations are a material inducement to, and are being relied upon by, the other in so entering into this Lease) that:

A. Due Authorization. Execution of this Lease, and performance by it of each and all of its obligations under this Lease, is in accordance with and has been duly authorized by all appropriate organizational action; and

B. No Violations of Agreements. Neither execution or this Lease nor performance of each and all of its obligations under this Lease will violate any law, agreement, or other arrangement by which it is bound.

C. Authorized Signatory. Any individual executing this Lease is authorized to do so by requisite action of the appropriate board, partnership, or other entity, as the case may be.

18.20 Resolutions. Landlord and Tenant will each, upon request of the other, from time to time provide appropriate authorizing resolutions evidencing their respective authority to enter into and perform each and all of their obligations under this Lease.

18.21 Approvals. Except as otherwise expressly provided herein, all approvals, consents and like action from time to time required or requested by either Landlord or Tenant under this Lease shall not be unreasonably or untimely withheld.

18.22 Business Days. For purposes of this Lease, "business" or similar days shall mean all days other than weekends and holidays and other days for which the State of Maryland is not generally open for the conducting of governmental business. If the date for any performance under this Lease falls on a day other than a business day, the date for such performance shall be extended to the next occurring business day.

18.23 Force Majeure. Notwithstanding anything to the contrary contained in this Lease, all of the parties' obligations, except the Tenant's obligation to pay Rent hereunder shall be subject to Force Majeure. For any Force Majeure resulting in a delay in either party's performance, provided that the claiming party is duly and diligently working to end the Force Majeure and minimize the impact of the Force Majeure, the performance of the party claiming Force Majeure shall be extended by one day for each day of delay in such party's performance attributable to the Force Majeure event. Any party claiming Force Majeure must provide the other party with prompt notice of the Force Majeure once the party knows of the Force Majeure event. The notice must describe the Force Majeure event, the anticipated duration of the Force

Majeure, and actions to be taken by the claiming party to end the Force Majeure and minimize its impact. Notwithstanding the provisions of this section, Tenant shall pay all Rent to Landlord without any offset, deduction or counterclaim whatsoever, for any matter arising out of the Force Majeure event.

18.24 Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

18.25 Exhibits. The following Exhibits attached hereto are by this reference incorporated herein.

18.26 Guarantor. This Lease shall not be effective unless the Guarantor entity listed herein shall execute a Guaranty of Lease in the form of the Guaranty of Lease attached as Exhibit B to this Lease and made a part hereof.

Signature Page & Acknowledgements Follow

Signature Page to Ground Lease

IN WITNESS WHEREOF, this Lease is executed as of the day and year first written above.

LANDLORD:

Attest: **CITY OF TAKOMA PARK, MARYLAND**

_____ _____(SEAL)
Suzanne Ludlow, City Manager

Date:_____

TENANT:

Attest: **NDC TAKOMA JUNCTION LLC.,** a Maryland limited liability company

By: **The Neighborhood Development Company**, a District of Columbia limited liability company, its Manager

_____ _____(SEAL)
Adrian G. Washington, Manager

Date:_____

Acknowledgements to Ground Lease

STATE OF MARYLAND)
) ss:
MONTGOMERY COUNTY)

The foregoing instrument was acknowledged before me as of the ___ day of _____, 201_ by_____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

STATE OF MARYLAND)
) ss:
MONTGOMERY COUNTY)

The foregoing instrument was acknowledged before me as of the ___ day of _____, 201__ by _____.

_____
Notary Public

My Commission Expires:
_____

SCHEDULE I

Year	Annual Base Rent	Monthly Base Rent
1	$10,000.00	
2	$10,000.00	
3	$10,000.00	
4	$10,000.00	
5	$10,000.00	
6	$29,000.00	$2,416.67
7	$29,870.00	$2,489.17
8	$30,766.10	$2,563.84
9	$31,689.08	$2,640.76
10	$32,639.76	$2,719.98
11	$33,618.95	$2,801.58
12	$34,627.52	$2,885.63
13	$35,666.34	$2,972.20
14	$36,736.33	$3,061.36
15	$37,838.42	$3,153.20
16	$38,973.58	$3,247.80
17	$40,142.78	$3,345.23
18	$41,347.07	$3,445.59
19	$42,587.48	$3,548.96
20	$43,865.10	$3,655.43
21	$45,181.06	$3,765.09
22	$46,536.49	$3,878.04
23	$47,932.58	$3,994.38
24	$49,370.56	$4,114.21
25	$50,851.68	$4,237.64
26	$52,377.23	$4,364.77
27	$53,948.54	$4,495.71
28	$55,567.00	$4,630.58
29	$57,234.01	$4,769.50
30	$58,951.03	$4,912.59
31	$60,719.56	$5,059.96
32	$62,541.15	$5,211.76
33	$78,176.25	$6,514.69
34	$78,461.54	$6,538.46
35	$80,815.39	$6,734.62
36	$83,239.85	$6,936.65
37	$85,737.04	$7,144.75
38	$88,309.15	$7,359.10

39	$90,958.43	$7,579.87
40	$93,687.18	$7,807.27
41	$96,497.80	$8,041.48
42	$99,392.73	$8,282.73
43	$102,374.51	$8,531.21
44	$105,445.75	$8,787.15
45	$108,609.12	$9,050.76
46	$111,867.39	$9,322.28
47	$115,223.42	$9,601.95
48	$118,680.12	$9,890.01
49	$122,240.52	$10,186.71
50	$125,907.74	$10,492.31
51	$129,684.97	$10,807.08
52	$133,575.52	$11,131.29
53	$137,582.79	$11,465.23
54	$141,710.27	$11,809.19
55	$145,961.58	$12,163.47
56	$150,340.42	$12,528.37
57	$154,850.64	$12,904.22
58	$159,496.16	$13,291.35
59	$164,281.04	$13,690.09
60	$169,209.47	$14,100.79
61	$174,285.76	$14,523.81
62	$179,514.33	$14,959.53
63	$184,899.76	$15,408.31
64	$190,446.75	$15,870.56
65	$196,160.15	$16,346.68
66	$245,200.19	$20,433.35
67	$252,556.20	$21,046.35
68	$260,132.89	$21,677.74
69	$267,936.87	$22,328.07
70	$275,974.98	$22,997.92
71	$284,254.23	$23,687.85
72	$292,781.85	$24,398.49
73	$301,565.31	$25,130.44
74	$310,612.27	$25,884.36
75	$319,930.64	$26,660.89
76	$329,528.56	$27,460.71
77	$339,414.41	$28,284.53
78	$349,596.85	$29,133.07
79	$360,084.75	$30,007.06
80	$370,887.29	$30,907.27

81	$382,013.91	$31,834.49
82	$393,474.33	$32,789.53
83	$405,278.56	$33,773.21
84	$417,436.92	$34,786.41
85	$429,960.02	$35,830.00
86	$442,858.83	$36,904.90
87	$456,144.59	$38,012.05
88	$469,828.93	$39,152.41
89	$483,923.80	$40,326.98
90	$498,441.51	$41,536.79
91	$513,394.75	$42,782.90
92	$528,796.60	$44,066.38
93	$544,660.50	$45,388.38
94	$561,000.31	$46,750.03
95	$577,830.32	$48,152.53
96	$595,165.23	$49,597.10
97	$613,020.19	$51,085.02
98	$631,410.79	$52,617.57
99	$650,353.12	$54,196.09

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION

Metes and Bounds Description: Lot 39 & P/O Lots 32-37, Block 19 B.F. Gilberts Addition to Takoma Park, Wheaton (13th) Election District, Montgomery County, Maryland

Beginning for the subject property at an iron rod set at the southerly corner of Lot 39 in Block 19 of B.F. Gilberts Addition to Takoma Park Subdivision which is as recorded in Plat Book "A" at Folio 2 among the Land Records of Montgomery County, Maryland and thence with the division line between Lots 14 and 39 North 54° 18' 07" West, 182.67 feet to an iron rod set at the common corner of Lots 39, 14, 30, 31 & 32 and thence with part of the division line between Lots 31 and 32 North 00° 53' 09" West, 79.08 feet to an iron rod set and thence crossing Lot 32 with the following two courses and distances (1) North 85° 59' 18" East, 33.77 feet to a nail set and thence (2) North 04° 00' 42" West, 137.05 feet to an iron pipe found and thence with the southerly right of way line of Carroll Avenue (60' R/W) Maryland State Route #I95 and Route 410 along the arc of a curve deflecting to the right and having a radius of 316.76 feet and a long chord bearing and distance of North 78° 20' 19" East, 16.14 feet and an arc distance of 16.15 feet to a P.K. nail set and thence recrossing Lot 32 South 04° 00' 42" East, 139.20 feet to an iron rod set and thence crossing Lots 32 and 33 North 85° 59' 18" East, 38.95 feet to a P.K. nail set and thence crossing Lot 33 North 04° 00' 43" West, 141.41 feet to a P.K. nail set and thence continuing with the aforesaid southerly right of way line of Carroll Avenue North 83° 58' 14" East, 187.75 feet to an iron set and thence crossing Lot 37 South 04° 00' 42" East, 182.56 feet to an iron rod set and thence with the northerly right of way line of Columbia Avenue (40' R/W) the following three courses and distances (1) South 60° 05' 47" West, 2.89 feet to an iron rod set and thence (2) along the arc of a curve deflecting to the left and having a radius of 240.00 feet and a long chord bearing and distance of South 42° 10' 10" West, 147.75 feet and an arc of 150.18 feet to an iron rod set and thence (3) South 24° 14' 33" West, 65.36 feet to the point of beginning and containing 61,862 square feet or 1.4202 acres of land more or less.

EXHIBIT "B"

FORM OF MEMORANDUM OF LEASE

When recorded, return to:

_____

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE ("Memorandum") is made as of _____, 2016, by CITY OF TAKOMA PARK, MARYLAND, a municipal corporation ("Landlord") and NDC TAKOMA JUNCTION, LLC, a Maryland limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant entered into that certain Ground Lease of even date herewith ("Ground Lease"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord the real property, more particularly described on Exhibit A ("Property") and all improvements currently existing of hereafter constructed on the Property.

B. Landlord and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Ground Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Property for a Lease Term of ninety-nine (99) years, commencing on _____ and expiring at 12:00 o'clock Midnight, local time on last day of the twelfth (12^{th}) full calendar month of the ninety-ninth (99^{th}) year after _____ (the "Initial Term"), unless sooner terminated in accordance with the terms of this Lease. Upon the expiration or prior termination of the Ground Lease, the parties shall record a termination of this Memorandum in the land records of Montgomery County, Maryland.

2. Successors and Assigns. This Memorandum and the Ground Lease shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns, subject, however, to the provisions of the Ground Lease on assignment.

3. Governing Law. This Memorandum and the Ground Lease are governed by

Maryland law.

Executed as of the date first above written.

IN WITNESS WHEREOF, this Memorandum of Lease is executed as of the day and year first written above.

LANDLORD:

Attest:

CITY OF TAKOMA PARK, MARYLAND

_____

_____(SEAL)
Suzanne Ludlow, City Manager

Date:_____

TENANT:

Attest:

NDC TAKOMA JUNCTION LLC., a Maryland limited liability company

The Neighborhood Development Company, a District of Columbia limited liability company, its Manager

_____

_____(SEAL)
Adrian G. Washington, Manager

Date:_____

EXHIBIT “C”

PROHIBITED USES

An amusement park, carnival or circus; sporting event or other sports facility; mortuary or funeral parlor; establishment selling cars or other motor vehicles, motor vehicle maintenance or repair shop or gas station, or any establishment selling trailers; liquor store (provided, however, the sale of wine and beer is not a prohibited use); pawn shop, check cashing store or “payday“ loan operation; gun shop; amusement center, flea market, massage parlor, "disco" or other dance hall; tattoo or body piercing parlor, tanning salon; casino, gaming room or "off track betting" or other gambling operation; for the sale of paraphernalia for use with illicit drugs or for the sale of medicinal marijuana; or for the sale, rental or display of pornographic materials, adult entertainment facilities; and places of religious worship, instruction or other activities that have an explicit religious content, regardless of religious denomination.

EXHIBIT D

FORM OF GUARANTY OF LEASE

For and in consideration of the execution of the foregoing and annexed GROUND LEASE dated the ____ day of _____, 2016 (the "Lease") executed by and between CITY OF TAKOMA PARK, MARYLAND, a municipal corporation (hereinafter called "Landlord") and NDC TAKOMA JUNCTION, LLC, a Maryland limited liability company (hereinafter called "Tenant") with respect to that (certain real property, commonly known as Takoma Junction, which is located at the intersection of Carroll Avenue and Route 410 in the Takoma Park, Maryland containing approximately 1.42 acres of land with improvements (the "Property"), all as more particularly described in the Lease, and as a material inducement to the Landlord's execution of the Lease, and in consideration of TEN DOLLARS ($10.00) paid to the undersigned, THE NEIGHBORHOOD DEVELOPMENT COMPANY, L.L.C., a District of Columbia limited liability company (hereinafter referred to as "Guarantor") who is materially benefited by the Lease, the receipt and sufficiency of which considerations are hereby expressly acknowledged by Guarantor, the undersigned does hereby irrevocably, unconditionally and without reservation guarantee to the Landlord and Landlord's successors in interest and assigns, the following:

Subject to the last paragraph of this Guaranty, for and during the term of the Lease, including any renewal, option or holdover terms thereto, (hereinafter called the "Guaranty Period"):

(a) subject to the limitations below, the due and punctual payment in full (and not merely the collectibility) when and as due of all Rent due under the Lease; and

(b) the due and punctual performance and completion by Tenant of all covenants, undertakings, duties, agreements, liabilities, obligations and requirements made by or imposed upon Tenant pursuant to the terms and provisions of the Lease; and

(c) the due and punctual payment in full of all costs and expenses, including without limitation all court costs, all expenses and all reasonable attorney's fees, paid or incurred by Landlord in the enforcement of Landlord's rights under the Lease and of Tenant's obligations under the Lease.

All matters mentioned in clauses (a), (b) and (c) above are hereinafter collectively sometimes called the "Obligations."

Guarantor also guarantees to Landlord the due and punctual payment in full of all costs and expenses, including without limitation all court costs, all expenses and all reasonable attorney's fees, paid or incurred by Landlord in the enforcement of Landlord's rights under this Guaranty and of Guarantor's obligations under this Guaranty.

Guarantor hereby expressly further covenants and agrees that if any default shall be made by Tenant in the payment of any of the Obligations at any time(s) during the applicable Guaranty Period beyond any applicable grace period, then and in any such event Guarantor will pay the Obligations and all arrears thereof and perform and complete the Obligations and all defaults thereunder, and all costs and expenses which Landlord may suffer or sustain in connection with pursuing its rights against Guarantor hereunder.

The liabilities and undertakings of Guarantor shall be and are primary, direct and immediate and shall not be conditional or contingent upon the pursuit or enforcement by Landlord of any remedies it may have against Tenant with respect to the Lease, whether pursuant to the terms thereof or by operation of law. Without limiting the generality of the foregoing, it is agreed that Landlord need not make any demand on Tenant, (except to the extent of notice required under the Lease) or otherwise pursue, enforce or exhaust its remedies against Tenant either before, concurrently with or after pursuing or enforcing its rights and remedies hereunder. Any one or more successive or concurrent actions or proceedings may be brought against Guarantor under this Guaranty, in separate actions or proceedings, as often as Landlord may deem expedient or advisable, and without constituting an election of remedies or a bar to any other remedies available to Landlord.

Guarantor hereby expressly waives (i) presentment and demand for payment of the Obligations and protest of non-payment; (ii) notice of acceptance by Landlord of this Guaranty and of presentment, demand and protest thereof; (iii) notice of any default hereunder or under the Lease (except to the extent of notice required under the Lease) and notice of all indulgences; (iv) demand for observance, performance or enforcement of any of the terms or provisions of this Guaranty or the Lease; (v) any right or claim of right to cause a marshalling of the assets of Tenant; (vi) a jury trial in any proceeding at law or in equity in any court of competent jurisdiction; and (vii) all other notices and demands otherwise required by law which Guarantor may lawfully waive.

Guarantor hereby further agrees that the failure of Landlord to require strict performance at any time(s) of the terms, provisions or covenants of the Lease or any waiver by Landlord of performance by Tenant thereunder, shall not release Guarantor from any liability under this Guaranty. Guarantor hereby agrees that the terms and provisions of the Lease may be amended or modified in any manner in writing by the parties thereto without notice to Guarantor, and without Guarantor's consent, approval or waiver, and without thereby releasing Guarantor from any liability under this Guaranty. This Guaranty, and Guarantor's liabilities and obligations hereunder, shall extend fully to the Lease and also to all of the terms and provisions of any and all amendments, modifications or changes at any times(s) made to the Lease, with or without notice thereof, except that Guarantor shall be released from all obligations under this Guaranty accruing after a permissible assignment under the Lease if the Tenant is released from all obligations accruing under the Lease after a permissible assignment pursuant to the provisions of Section 14 of the Lease. This Guaranty and Guarantor's liability hereunder shall continue unaffected by any assignment or assignments of the Lease (in whole or in part) or by any sublettings in whole or in part of the Premises demised thereunder, made from time to time, whether or not notice thereof is given to Guarantor. Guarantor hereby expressly waives all right

to notice or approval by it of any assignment, subletting, modification or amendment affecting the Lease in whole or in part, and also as to the substance of any such modifications or amendments to the Lease made at any time(s). Guarantor hereby acknowledges his receipt of a complete copy of the Lease prior to execution of this Guaranty.

This Guaranty shall be construed under the laws of the State of Maryland. All provisions hereof shall be binding upon and enforceable against Guarantor and shall inure to the benefit of and be enforceable by Landlord and its successors in interest, heirs and assigns. Time is hereby agreed to be of the essence as regards all of Guarantor's liabilities, covenants, undertakings and obligations hereunder.

If Landlord becomes obligated by any bankruptcy or other law involving Tenant or any Guarantor as the subject debtor to repay to Tenant or any Guarantor or to any trustee, receiver or other representative or any of them, any amounts previously paid to Landlord under the Lease or this Guaranty, then this Guaranty shall be reinstated in the amount of such repayment. Landlord shall not be required to litigate or otherwise dispute its obligation to make such repayments if it in good faith and on the advice of counsel believes that such obligation exists or might exist. Guarantor hereby waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Tenant that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement exoneration, indemnification, or participation in any claim, right or remedy of Guarantor against Tenant or any security which Guarantor now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

None of the terms or provisions of this Guaranty may be waived, modified, discharged or terminated except by instrument in writing executed by Landlord. None of the terms or provisions of this Guaranty shall be deemed to have been abrogated or waived by reason of any failure or failures of Landlord to enforce the same. Guarantor shall not be relieved of any liability hereunder by reason of the failure of Landlord to comply with any request of Guarantor or of any other person to take action to enforce any provisions of the Lease or by reason of any agreement of stipulation extending the time of payment of the Obligations or of performance or modifying the terms of the Lease without first having obtained the consent of Guarantor.

Provided the Tenant is not then in default pursuant to the provisions of the Lease beyond the expiration of any applicable notice and cure period expressly provided for herein, commencing on the date that is seven hundred twenty (720) days after Substantial Completion as defined in Section 1 of the Lease and the Development Agreement (as defined in the Lease) Guarantor's liability for Rent hereunder shall not exceed an amount equal to the sum of (i) all Rent due and payable, or which has accrued but as yet has not been billed and/or paid, under the Lease through the date that is seven hundred twenty (720) days after Substantial Completion, (ii) all costs and expenses incurred by Landlord in collecting such sum or any part thereof or of otherwise enforcing this Guaranty, including reasonable attorneys' fees and court costs.

[Signature Page Follows]

WITNESS the execution hereof by the Guarantor on this ____ day of _____, 2016.

WITNESS:

_____

GUARANTOR:

THE NEIGHBORHOOD DEVELOPMENT COMPANY, L.L.C., a District of Columbia

_____[SEAL]
By: Adrian Washington, Manager

EIN Number# _____

Address: _____
_____

Subscribed and sworn to before me by the above-named individuals this _____ day of _____, 2016 by, being personally well known to me or identified to me.

_____
Notary Public

My commission expires: _____