

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

BINDING PLEDGE COVENANT
As Security for Performance of Green Building Act Requirements

THIS BINDING PLEDGE COVENANT (the “**Binding Pledge**”) is made by [REDACTED], its successors and assigns (“**Ground Lessee**”), as of the date of execution by the Ground Lessee for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”), acting by and through the Department of Consumer and Regulatory Affairs (“**DCRA**”).

RECITALS

A. The District of Columbia is the owner in fee simple of certain real property and improvements (collectively, the “**Property**”) located in the District of Columbia with a street address of [REDACTED], **Washington, DC 200** [REDACTED] and known for assessment and taxation purposes as Lot(s) [REDACTED] in Square [REDACTED], as more particularly described in **Exhibit A**.

B. Pursuant to a Ground Lease Agreement, dated [REDACTED], 20 [REDACTED] and then assigned (collectively the “[REDACTED]”), the District (acting by and through the Office of the Deputy Mayor for Planning and Economic Development), has leased the Property to Ground Lessee. The [REDACTED] is evidenced by that certain Memorandum of Lease, dated [REDACTED], 20 [REDACTED] recorded among land records of the Office of the Recorder of Deeds as (the “**Land Records**”) Document No. [REDACTED].

C. Section 6 of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code §6-1451.05, as amended, together with any implementing regulations, the “**Green Building Act**”), requires certain building projects in the District to provide evidence of financial security to assure compliance with certain LEED certification standards as a condition to the issuance by DCRA of the first Certificate of Occupancy for occupiable space in a story above grade plane in the project (the “**First Certificate of Occupancy**”). The financial security may take the form of a binding pledge that, within 24 calendar months following the issuance of the First Certificate of Occupancy, the Ground Lessee will fulfill or exceed the Leadership in Energy and Environmental Design (“**LEED**”) standard of the United States Green Building Council (“**USGBC**”) for commercial and institutional buildings at the Certified level applicable to the project at the time the building permit for the project was issued by DCRA, as amended pursuant to Section 12(c) of the Green Building Act, as defined in Paragraph 2. Where a binding pledge constitutes the financial security vehicle, the binding pledge must be recorded as a covenant in the land records of the Recorder of Deeds for the District of Columbia (the “**Land Records**”).

D. DCRA has issued Building Permit Number B [REDACTED], as may have been revised and/or extended (collectively, the “**Permit**”), attached hereto as **Exhibit B**, to construct a project on the Property (the “**Project**”) that is subject to the Green Building Act. The Project contains [REDACTED] square feet of gross floor area (the “**GFA**”) as defined by the Zoning Regulations of the District of Columbia (Title 11 of the District of Columbia Municipal Regulations).

E. The Project is registered with the USGBC as LEED Project Title [REDACTED] and LEED Project ID Number [REDACTED] for certification under LEED-[REDACTED] version [REDACTED]. The Ground Lessee has granted DCRA access to the LEED Online Account for the Project for compliance purposes.

F. In order to ensure Ground Lessee's compliance with the applicable requirements of the Green Building Act and to allow DCRA to issue a First Certificate of Occupancy for the Project prior to the issuance of the LEED Standard certification for the Project, Ground Lessee is entering into this Binding Pledge.

NOW, THEREFORE, for and in consideration of the issuance of a Certificate of Occupancy for the Project by the District, and other good and valuable consideration the sufficiency of which is hereby acknowledged, Ground Lessee for itself, its successors and assigns, does hereby acknowledge, represent, covenant, agree, and warrant to the District as follows:

1. **Recitals and Exhibits Incorporated.** The foregoing Recitals and attached Exhibits are all hereby incorporated in and made a part of this Binding Pledge to the same extent as if herein set forth in full, provided however, that said Recitals shall not be deemed to modify the express provisions hereinafter set forth. Any term not defined in this Binding Pledge shall have the meaning ascribed to such term in the Green Building Act.

2. **LEED Certification by Verification Date.** Ground Lessee hereby pledges that, no later than the two year anniversary of the date of issuance of the First Certificate of Occupancy (the "**Verification Date**"), (a) the Project shall comply with the applicable requirements of the Green Building Act, and (b) Ground Lessee shall obtain and provide to the Director of DCRA (the "**Director**") a certification of the Project to no less than the applicable LEED Standard (a "**Certification**"), which is LEED-[REDACTED] version [REDACTED] at the [REDACTED] level (the "**LEED Standard**"). This Certification shall be in the form of either (i) a true copy of the LEED Certification Review Report issued for the Project on the Project's LEED Online Account certifying that at least the LEED Standard was achieved, or (ii) a certification acceptable to the Director that the Project has, at a minimum, fulfilled or exceeded the LEED Standard. The Verification Date may be extended upon the Director determining that reasonable grounds exist to justify such extension as for good cause per Sections 6(g) and 11(d) of the Green Building Act, as amended (D.C. Official Code §§ 6-1451.05(g) and 6-1451.05(d)).

3. **Certificate of Compliance.** If the Director receives the Certification on or before the Verification Date, the Director shall issue a Certificate of Compliance to Ground Lessee. Within thirty (30) days of request from Ground Lessee, following issuance of the Certificate of Compliance, the District shall execute and deliver to Ground Lessee an instrument of termination of this Binding Pledge, in recordable form, which the Ground Lessee shall cause to be recorded among the Land Records at its own expense.

4. **Financial Penalty.** If Ground Lessee fails to provide the Certification by the Verification Date in accordance with Section 2, Ground Lessee agrees to pay the District the sum of [REDACTED] **U.S. Dollars (\$ [REDACTED].00)** (the "**Penalty Amount**", calculated per Section

6(f) of the Green Building Act, as amended (D.C. Official Code §6-1451.05(f)), as (i) \$7.50 per square foot of GFA if less than 100,000 square feet; or (ii) otherwise as \$10.00 per square foot of GFA up to a maximum of Three Million Dollars (\$3,000,000.00)), subject to adjustment in accordance with Section 5 below. Payment shall be made by Ground Lessee within five (5) business days after written notification by the District in accordance with, and to the address specified in, the District's written notification.

5. **Substantial Compliance Penalty Reduction.** If Ground Lessee misses the LEED Standard by three (3) or fewer points and the Director determines the Project has substantially complied with the Green Building Act, the parties agree that Ground Lessee shall be liable for 50% of the Penalty Amount.

6. **Additional Financial Penalty.** If the Ground Lessee fails to provide the Certification by the Verification Date, the Ground Lessee shall have an additional two (2) years from the Verification Date (a) to provide the Director with the Certification; or (b) to provide the Director with other evidence satisfactory that the Project has fulfilled or exceeded either (i) the LEED Standard or (ii) the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the certified level. If the Ground Lessee fails to comply with the provisions of this Section 6 on or before the date that is two (2) years after the Verification Date, then, in addition to the Penalty Amount due under Sections 4 or 5 above, Ground Lessee shall pay an additional monthly amount of \$0.02 per square foot of the GFA (the "**Additional Penalty Amount**"), until such time as the Ground Lessee provides evidence satisfactory to the Director that the Project has fulfilled or exceeded either the LEED Standard or the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the Certified level. The Additional Penalty Amount shall accumulate monthly but shall be assessed annually.

7. **No Release Until Full Compliance.** If the Ground Lessee fails to provide Certification by the Verification Date, this Binding Pledge shall not be released by the District until the Ground Lessee (a) provides the Director with either (i) a Certification; or (ii) evidence satisfactory to the Director that the Ground Lessee has fulfilled or exceeded either the LEED Standard or the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the Certified level, in accordance with Section 6 above; and (b) pays any and all penalties accruing under this Binding Pledge. When the Ground Lessee has complied with both (a) and (b) above, the Ground Lessee may submit a written request to the Director to execute an instrument of termination of this Binding Pledge, in recordable form, which the Director shall deliver to Ground Lessee within thirty (30) days of receipt of Ground Lessee's written request and which the Ground Lessee shall cause to be recorded among the Land Records at its own expense.

8. **Real Covenants.** The provisions of this Binding Pledge shall be construed as real covenants running with the land and shall bind the Ground Lessee and its successors and assigns.

9. **Ground Lessee's Responsibility to Comply.** Ground Lessee shall, at its sole expense, comply with all provisions of this Binding Pledge.

10. **Modification and Termination of Binding Pledge.** The form of this Binding Pledge has been approved by the Office of the Attorney General pursuant to the Green Building

Act. This Binding Pledge, and the provisions contained herein, may not be modified, amended, or terminated, without the prior written consent of the Ground Lessee and of the District, as approved for technical sufficiency by DCRA and for legal sufficiency by the Office of the Attorney General, such agreement to be evidenced by a document duly executed and delivered in recordable form and recorded among the Land Records at no expense to the District.

11. **Recordation of Binding Pledge.** Ground Lessee shall, at its cost and expense, properly file and record this Binding Pledge among the Land Records. Ground Lessee shall furnish to DCRA a copy of this Binding Pledge, certified by the Recorder of Deeds as a true copy of the recorded instrument, before issuance of the First Certificate of Occupancy for the Project.

12. **Good Standing.** To the extent the Ground Lessee is an entity, Ground Lessee warrants that it (i) is duly organized, validly existing and in good standing under the laws of its state of formation and is qualified to do business; (ii) is in good standing under the laws of the District of Columbia; (iii) is authorized to perform under this Binding Pledge; and (iv) has all necessary power to execute and deliver this Binding Pledge.

13. **Valid Execution and Delivery.** This Binding Pledge has been duly executed and delivered by Ground Lessee, and constitutes the legal, valid, and binding obligations of Ground Lessee, and its successors and assigns, enforceable against the then party interest with regard to the ownership of the Property at the time of any enforcement action, in accordance with its terms.

14. **District's Authority to Enforce Binding Pledge.** If the Ground Lessee fails to satisfy the requirements of this Binding Pledge or fails to pay the Penalty Amount or Additional Penalty Amount if and when due hereunder, the District shall be entitled to exercise all rights and remedies available to it, including the right to specifically enforce this Binding Pledge. If the District elects to take enforcement action, and if the District shall prevail in such enforcement action, then Ground Lessee shall pay to the District all of the District's costs and expenses, including reasonable attorney fees, incurred in connection with District's enforcement action. If the Office of the Attorney General is counsel for the District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General prepared for or participated in any such action.

15. **No Waiver by Delay.** Any delay by the District in instituting or prosecuting any action or proceeding with respect to a violation of this Binding Pledge by Ground Lessee shall not operate as a waiver of, or a limit in any way upon, the District's rights under this Binding Pledge or of any other right or remedy available under law or in equity (it being the intent of this provision that the District shall not be constrained by waiver, by laches, or otherwise in the exercise of such remedies).

16. **Governing Law.** This Binding Pledge shall be governed by, construed, performed and enforced in accordance with, the laws of the District of Columbia. If any action or proceeding is initiated in connection with this Binding Pledge and any and all obligations arising hereunder, the venue thereof shall be the Superior Court of the District of Columbia.

17. **Severability.** If any of the covenants, warranties, conditions or terms of this Binding Pledge shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

18. **Counterpart Execution.** This Binding Pledge may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

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

Property address: [REDACTED], Washington, DC 200 [REDACTED]

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Ground Lessee has, as of the day and year first above written, caused this Pledge Agreement to be duly signed and executed.

Ground Lessee's Legal Name: [Redacted]

By: [Redacted]
[Redacted]
[Redacted]

Ground Lessee's Address for Notices:

[Redacted]
[Redacted]
[Redacted]

Acknowledgment

City/County/District of [Redacted]
State of [Redacted],

I, [Redacted] (*name of notary*), a Notary Public in and for the jurisdiction aforesaid, do hereby certify that [Redacted] (*name of person signing on behalf of Ground Lessee*), as the duly authorized [Redacted] (*title of signatory*) of [Redacted] (*name of Ground Lessee entity*), a party to the foregoing Binding Pledge Covenant, personally appeared before me and acknowledged said Binding Pledge Covenant to be the act and deed of [Redacted] (*name of Ground Lessee entity*) and that s/he delivered the same as such.

GIVEN under my hand and seal this [Redacted] day of [Redacted], 20[Redacted].
[Redacted]

Notary Public

My commission expires: [Redacted]
[NOTARIAL SEAL]

ACKNOWLEDGED WITH CONSENT AS OWNER OF THE PROPERTY

GROUND LESSOR: [REDACTED]

[DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development pursuant to Mayor's Order 2008-43]

[REDACTED]

Date: [REDACTED]

[Name and Title]

[Ground Lessor]

Approved as to Technical Sufficiency:

[REDACTED] [Signature]

Date: [REDACTED]

[REDACTED] [Title]

District of Columbia Department of Consumer and Regulatory Affairs

Approved as to Legal Sufficiency:

[REDACTED]

Date: [REDACTED]

Assistant Attorney General, Commercial Division
District of Columbia Office of the Attorney General

EXHIBIT A

Legal Description of the Property

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

Lot numbered [REDACTED] in Square [REDACTED] in the subdivision made as per plate recorded in the Office of the Surveyor of the District of Columbia in Book [REDACTED] at page [REDACTED].

EXHIBIT B

Project Permit