

# Certified True Copy

## COVENANT

THIS COVENANT (the "Covenant") is made as of the 1<sup>st</sup> day of May, 2009 ("Effective Date"), between (i) 1330 MISSOURI AVENUE, LLC, a District of Columbia limited liability company, its successors and assigns (the "Owner") and (ii) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "District").

## RECITALS

R-1. Owner owns the unimproved real property located at 1330 Missouri Avenue, N.W. in Washington, D.C., known for tax and assessment purposes as Lot 877 in Square 2794 (the "Property").

R-2. District owned the real property located at 6425 14<sup>th</sup> Street, N.W. in Washington, D.C., known for tax and assessment purposes as Lot 0184 in Square 2786 (the "District Property").

R-3. District and Owner entered into a Land Disposition Agreement, effective January 29, 2009 (the "Agreement"), pursuant to which District agreed to sell the District Property to Owner subject to certain terms and conditions that survive the sale, including that Owner record this Covenant against the Property.

R-4. As required by the Agreement, Owner, for the benefit of District, agrees to the terms and conditions set forth below.

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

## ARTICLE I DEFINITIONS AND MISCELLANEOUS PROVISIONS

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

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

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

"Commencement of Construction" means Owner has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for work on the Project, and (iv) obtained the building permit and

commenced work on the Project. For purposes of this Agreement, the term “**Commencement of Construction**” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Project thereon or the investigations of environmental conditions.

“**Completion of Construction**” means (i) Owner has substantially completed construction of the Project, exclusive only of Punch List Items; (ii) Owner’s general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items; and (iii) a certificate of occupancy has been issued for the Project.

“**Development Plan**” means the Owner’s general plan for developing and constructing approximately Fifty-four (54) single room occupancy (“SRO”) style units for senior citizens and support space. District acknowledges it has approved the Development Plan, which is subject to modification from time to time with the reasonable consent of the District.

“**DOES**” is the District of Columbia Department of Employment Services.

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

“**Force Majeure**” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Owner; (ii) is not due to the fault or negligence of Owner; (iii) is not reasonably foreseeable and avoidable by the Owner, and (iv) directly results in a delay in performance by Owner; but specifically excluding (A) shortage or unavailability of funds or financial condition or (B) changes in market conditions such that construction of the Project as contemplated by this Agreement is no longer practicable under the circumstances.

“**Guarantors**” are Blue Sky Development, LLC or any other person or entity approved by District in its sole discretion.

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

“**Letter of Credit**” means the letter of credit Owner has delivered to District in accordance with Article II below.

“**Operator First Source Agreement**” is that agreement, in customary form and otherwise acceptable to District, entered into in accordance with Section 3.2.1 herein.

**“Owner First Source Agreement”** is that agreement between the Owner and the DOES, entered into in accordance with Section 3.2.1, governing certain obligations of Owner regarding job creation and employment generated as a result of construction of the Project.

**“Project”** means the development and construction of improvements in general accordance with the Development Plan.

**“Punch List Items”** mean the minor items of work to be completed or corrected prior to final payment to Owner’s general contractor pursuant to its construction contract in order to fully complete the Project.

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

**“Units”** means the SRO - style units to be constructed in general accordance with the Development Plan.

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

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

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

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

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

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Owner or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

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

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

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

1.11 FORCE MAJEURE DELAYS. Owner shall not be considered in default to perform its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Owner shall be extended for the period of the Force Majeure; provided, however that: (a) Owner shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, District thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; and (b) Owner must take commercially reasonable actions to minimize the delay. If Owner requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Owner to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

## ARTICLE II FINANCING; LETTER OF CREDIT

2.1 OBLIGATION TO PURSUE FINANCING. Owner hereby agrees to pursue diligently and in good faith all sources of financing necessary to meet the obligations contained in Article III and Article IV of this Covenant, including the 9% low income housing tax credit allocation from the allocating agency and/or entity. In the event that, despite diligent and good faith efforts, Owner receives a final determination from the allocating agency and/or entity that it has not been awarded the 9% low income housing tax credit allocation, such non-award shall not be considered an Event of Default and, within the earlier to occur of ninety (90) days of the receipt of notice of such non-award or the date by which Owner is obligated to achieve Commencement of Construction pursuant to this Covenant, Owner may propose for District's review and approval alternate terms for Article III and Article IV of this Covenant, such approval not to be unreasonably withheld, conditioned or delayed by District. If the parties are not able to agree on commercially reasonable alternate terms for Article III and Article IV of this Covenant within 120 days after District receives Owner's proposal, both parties agreeing to use good faith and diligent efforts to reach such agreement, then either party may terminate this Covenant and the parties shall promptly execute a release of this Covenant.

2.2 LETTER OF CREDIT. At the time of funding of the construction loan for the Project, Owner shall deliver to District a letter of credit, in the form attached to the Agreement, in the amount of Seventy Five Thousand Dollars (\$75,000.00) ("**Letter of Credit**"). The Letter of Credit shall be used as security to ensure Owner's compliance with Article III of this Covenant. The Letter of Credit may be drawn on by District in accordance with the terms of Article V hereof. The Letter of Credit shall be returned to Owner upon Completion of Construction.

2.3 NOTICE OF DEFAULT. Owner shall provide notice to the District if it receives a notice of default, or otherwise obtains actual knowledge of Owner's default, under any mortgage, deed

of trust, lien or other encumbrance on the Property existing as of the Effective Date within fifteen (15) days of receiving any notice, or other knowledge, of such default.

### **ARTICLE III CONSTRUCTION COVENANTS**

#### **3.1 OBLIGATION TO CONSTRUCT PROJECT**

3.1.1 Owner hereby agrees to develop and construct the Project in general accordance with the Development Plan.

3.1.2 Subject to Force Majeure, Owner shall achieve Commencement of Construction by the date that is eighteen (18) months after the Effective Date.

3.1.3 Subject to Force Majeure, Owner shall achieve Completion of Construction by the date that is twenty four (24) months after Owner achieves Commencement of Construction.

3.1.4 At the time of funding the construction loan for the Project, Owner shall deliver to District a guaranty, in a form that is acceptable to the District in its reasonable discretion, to be executed by Guarantors, which shall bind the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Covenant.

#### **3.2 COMPLIANCE WITH AGREEMENTS.**

3.2.1 First Source Agreement. Owner shall use commercially reasonable efforts to cause the entity(ies) engaged for property management and security at the Project to enter into and comply with an Operator First Source Agreement with DOES, which shall govern such entity(ies) activities at the Project for the term thereof. Owner agrees to comply with and maintain the Owner First Source Agreement.

3.2.2 CBE Agreement. Owner shall comply with the CBE Agreement for the term thereof.

### **ARTICLE IV AFFORDABILITY COVENANT**

Eighty-three percent (83%) of the Units shall be affordable for households earning below 30% of AMI and Seventeen percent (17%) of the Units shall be affordable for households earning below 60% of AMI. As used in this Covenant, AMI means the area median income for a household in the "Washington Metropolitan Statistical Area" as set forth in the most current periodic calculation provided by the United States Department of Housing and Urban Development ("HUD"), adjusted for family size without regard to any adjustments made by the HUD for the purposes of the programs it administers. Adjustments of AMI for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)). Owner will provide copies to District of all reports and audits provided to the Department of



Housing and Community Development in connection with the 9% low income housing tax credits.

## **ARTICLE V TERM; RELEASE**

5.1 TERM OF CONSTRUCTION COVENANTS. This Covenant shall run with the land and otherwise remain in effect until (i) Completion of Construction in the case of the covenants set forth in Article III; or (ii) in perpetuity in the case of the covenants set forth in Article IV. At the time of termination, Owner shall be entitled to a Release of this Covenant.

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

5.3 MORTGAGE AGREEMENT. Any lender may request that District enter into an agreement with such lender providing such lender with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such lender, and consent for such request shall not be unreasonably withheld, conditioned or delayed by District.

## **ARTICLE VI DEFAULT AND REMEDIES**

6.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Owner:

- (a) Owner defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;
- (b) Owner fails to achieve Commencement of Construction or Completion of Construction by the date set forth in this Covenant, subject to *Force Majeure*; or
- (c) Owner shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Owner

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or there shall be appointed any receiver or trustee to take possession of any property of Owner and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

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

- (a) District may draw on the Letter of Credit, in an amount to be determined by District, in its sole but reasonable discretion, up to the full amount of the Letter of Credit, upon an Event of Default that arises under Section 6.1(b);
- (b) District may cure Owner's Event of Default, at the reasonable cost and expense of Owner, after ten (10) Business Days notice to Owner. Owner shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Owner within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid. Notwithstanding the foregoing, no amounts shall be due to District hereunder unless such cure is actually accomplished in accordance with the terms of this Covenant;
- (c) District may pursue specific performance of Owner's obligations hereunder; and
- (d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief.

## **ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Owner, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns. Owner covenants that any conveyance of the Property shall contain a specific covenant binding the grantee and its successors and assigns to develop and use the Property in accordance with the terms and conditions of this Covenant. The obligations and liabilities of the Owner under this Covenant shall apply only with respect to the period that such Owner owns fee simple title to the Property. Upon conveyance by Owner of all of its fee simple interest to the Property (other than to a lender as security for a loan), such Owner shall be relieved of all obligations and liabilities under this Covenant arising after the date of the conveyance, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the conveyance, the successor, transferee or assign in ownership or interest of any such Owner shall automatically become liable for all obligations arising after the date of the conveyance.

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**ARTICLE VIII  
AMENDMENT OF COVENANT**

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

**ARTICLE IX  
NOTICES**

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

DISTRICT:

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

With a copy to:

Office of the Attorney General for the District of Columbia  
1100 15<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005  
Attn: Deputy Attorney General, Commercial Division

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

OWNER:

LLC  
1539 7th Street NW  
Washington, DC 20001  
Attention: Bryan Scottie Irving

With a copy to:

Reed Smith LLP  
1301 K Street NW  
Suite 1100 East Tower

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Washington, DC 20005  
Attention: A. Scott Bolden, Esq.

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

*[Signatures on following page]*



IN WITNESS WHEREOF, the District has, on this 1<sup>st</sup> day of May, 2009, caused this Covenant to be executed, acknowledged and delivered by Neil O. Albert, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

**OWNER:**

1330 Missouri Avenue, LLC,  
a District of  
Columbia limited liability company

By:   
Name: George Mavriks  
Title: General Manager

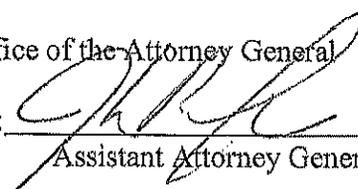
**DISTRICT:**

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

By:   
Name: Neil O. Albert  
Title: Deputy Mayor for Planning and Economic  
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By:   
Assistant Attorney General

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this 2<sup>th</sup> day of May, 2009, by George Mavrikes, the General Manager of 1330 Missoun Avenue LLC, Owner herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Owner, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

Cynthia Eagle  
Notary Public

[Notarial Seal]

My commission expires: Cynthia Eagle  
Notary Public, District of Columbia  
My Commission Expires 6/30/2011

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this 1<sup>st</sup> day of May, 2009 by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

XZAQUINETT Y. WARRICK  
Notary Public

[Notarial Seal]

My commission expires: 11/2013

**XZAQUINETT Y. WARRICK**  
Notary Public  
District of Columbia  
My Commission Expires November 2013

IN WITNESS WHEREOF, the District has, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, caused this Covenant to be executed, acknowledged and delivered by Neil O. Albert, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

**OWNER:**

\_\_\_\_\_, a District of  
Columbia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DISTRICT:**

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

By: \_\_\_\_\_  
Name: Neil O. Albert  
Title: Deputy Mayor for Planning and Economic  
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: \_\_\_\_\_  
Assistant Attorney General



**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, LLC, Owner herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Owner, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

DS

**Exhibit K**  
**Affordability Plan**

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6425 14<sup>th</sup> Street NW  
Affordable and Workforce Housing  
Initial Marketing Plan

Marketing & Sales Team

Dwayne Bradford  
Bradford Real Estate LLC  
4308 Georgia Ave  
Wash DC 20011  
Ward 4 Business and Resident

Bradford Real Estate has been in business for over 10 years and focuses on sales in Ward 4 and surrounding neighborhoods. The team has extensive experience working with first-time homebuyers and intends to leverage that experience when selling and marketing 6425 14<sup>th</sup> Street.

Public Information and Outreach Campaign

Develop and Disseminate Public Notices:

Highlighting 30%, 60% and 80% AMI units: Notices will include unit descriptions, estimated pricing and pricing calculation methodology, instructions for applying for/placing unit under contract, and deed restrictions.

Public Notices will be shared with neighborhood ANC, Brightwood Civic Association, available on project website, Greater Washington Urban League (HPAP) program and distributed to DC government employees and employee unions, DC Housing Finance Agency and local mortgage lenders.

In addition, the project information will be provided to the following housing counseling organizations:

Housing Counseling Services, Incorporated  
Latino Economic Development Corporation  
Lydia's House  
Marshall Heights Community Development Organization  
University Legal Services  
Consumer Credit Counseling Services



Project Signage:

Project signage located at the property will clearly state that the project will be “mixed-income” and will provide contact information for additional information on affordable units.

Advertisements:

Planned newspaper/online advertisements may include CityPaper, Washington Post among others. All project advertisements will include reference to the availability of affordable units and contacts for additional information.

“HPAP Friendly Sellers” Database:

The project and developer will be listed on the Greater Washington Urban League’s “Friendly Seller List” which will make the project information available to parties on the HPAP waiting list.