LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**"), is made effective for all purposes as of the _____ day of_____, 2013, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, ("**District**"), and (ii) 1300 H STREET NE LLC, a District of Columbia limited liability company (the "**Developer**").

RECITALS:

R-1. District owns the improved real property located at 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Square 1026, Lots 97, 98, 99, 100, 101, 102, and 103 (the "**Property**").

R-2. District desires to convey the Property to Developer to be developed in accordance with this Agreement.

R-3. The disposition of the Property to Developer was approved on [_____ _____] by the Council of the District of Columbia ("**Council**") pursuant to the [_____ _____], Resolution [_____], subject to the certain terms and conditions contained therein and herein incorporated ("**Resolution**").

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

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

ARTICLE I
DEFINITIONS

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

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

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

"**Affordable Unit**" means each unit to be developed, leased or sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

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

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

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

"Architect" means Stoiber + Associates, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Owner for the Project and reasonably approved by District.

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

"CBE Agreement" is that agreement dated prior to the Effective Date between Developer and DSLBD governing certain obligations of Developer with respect to the Project, which agreement is attached as Exhibit L.

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

"Closing" is the consummation of the purchase and sale of the Property as contemplated by this Agreement and the recording of the Deed.

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

"Commencement of Construction" means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for work on the Project, and (iv) obtained the Permits (through building permit) and commenced work on the Project pursuant to the Approved Plans and Specifications. 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 Improvements thereon or the investigations of environmental conditions.

"**Community Participation Plan**" is defined in Section 4.6.1.

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

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

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

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

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

"**Debt Financing**" shall mean the financing to be obtained by Developer from an Institutional Lender to fund all or, at Developer's election, part of the costs set forth in the Final Project Budget (including, without limitation, costs of issuance relating to any bond financings issued by the District or other governmental agency), and shall expressly exclude Mezzanine Loans and the Equity Investment.

"Deed" means the special warranty deed conveying the Property to Developer at Closing in the form of Exhibit B attached hereto and incorporated herein by reference.

"**Deposit**" is defined in Section 2.2.

"Design Development Plans" are the design plans produced after review and approval of Schematic Plans that reflect refinement of the Schematic Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District related to the Schematic Plans.

"**Developer Default**" is defined in Section 8.1.1.

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

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

"Development Plan" means Developer's detailed plans for developing and constructing the Project as a five (5) level (or, at Developer's sole election, four (4) level) mixed-use residential and retail development, containing approximately 8,000 square feet of retail, no less than approximately eight (8) parking spaces (provided, however, that Developer may elect, in its sole discretion, to have more than eight (8) parking spaces), a memorialization honoring RL Christian, and approximately 30 residential units or, at Developer's election, up to approximately 45 residential units, of which, in either event, no less than three (3) such residential units shall be affordable to households earning up to fifty percent (50%) of Area Median Income ("AMI") and no less than three (3) such residential units shall be affordable to households earning up to eighty percent (80%) of AMI, unless otherwise modified by Developer with the prior approval of District in its sole discretion.

"**Disapproval Notice**" is defined in Section 4.2.3.

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

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

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

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

"Environmental Laws" means any present or future federal or District law, statute, common law, rule, order, regulation, permit or other requirement or guideline having the force and effect of law of a federal or District governmental authority and relating to (a) the protection of human health, safety, and the environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) the release of a Hazardous Material into, onto, or about the air, land, surface water, or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.;

the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"Environmental Reports" shall mean, collectively, (a) that certain Phase I Environmental Site Assessment Report dated May 5, 2005, prepared by Environmental Consultants and Contractors, Inc., (b) that certain Final Phase II Environmental Site Assessment Report dated January 27, 2006, prepared by C.C. Johnson & Malhotra, P.C., and (c) that certain final Phase II Environmental Site Assessment Report dated October 28, 2013, prepared by Environmental Consultants and Contractors, Inc.

"**Equity Investment**" shall mean all funding provided by any Person or Members with a direct or indirect ownership interest in Developer that is required for the development and construction of the Project exclusive of any Mezzanine Loans and Debt Financing. Equity Investment may be made in the form of deferred development fees in an amount not to exceed the amount shown in the approved Project Funding Plan and Final Project Budget.

"First Source Agreement" is that agreement dated prior to the Effective Date between the Developer and DOES, entered into in accordance with Section 7.8 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project, which agreement is attached as Exhibit M.

"**Final Project Budget**" is defined in Section 9.3.2.

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

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

"**Guarantors**" shall mean [_____] and any successor(s) approved by District pursuant to Section 4.5.

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

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

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

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

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

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

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

"Material Change" means (i) any change in size or design from the Approved Plans and Specifications substantially affecting the general appearance or structural integrity, exterior walls and elevations, a change in the number of levels (provided, however, that a decrease in the number of levels from five (5) levels to four (4) levels shall not be deemed a Material Change and shall not require the District's consent), or a five percent (5%) or greater change in the lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications; (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications (provided, however, that any increase in the number of parking spaces up to seventeen (17) parking spaces shall not be deemed a Material Change and shall not require the District's consent); and (v) in the case of Affordable Units only, as compared against the Approved Plans and Specifications, any change of location within the Project of one (1) or more Affordable Units, any decrease in the number of Affordable Units below six (6) Affordable Units, any decrease in the rentable area of any Affordable Unit by more than twenty percent (20%), or any change in the level of interior finish of an Affordable Unit.

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

"Mezzanine Loan" means a loan to Developer, one or more of Developer's Members or partners or any Affiliate of Developer which is: (a) for the purpose of financing a portion of the acquisition and development of the Property or construction of the Project, (b) secured by the stock of Developer, one or more of Developer's members or partners or any Affiliate of Developer, (c) subordinated to the Debt Financing pursuant to an intercreditor agreement between the lender of the Mezzanine Loan and the lender of the Debt Financing, and (d) is not an Equity Investment, as defined herein, or similar financing provided in consideration of a direct or indirect ownership interest in Developer or the Project.

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

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

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

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

"**Payment Bond**" a bond that meets the requirements of Section 7.1.3, which shall be delivered to District pursuant to the terms of this Agreement.

"**Performance Bond**" a bond that meets the requirements of Section 7.1.3, which shall be delivered to District pursuant to the terms of this Agreement.

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

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

"**Permitted Transfer**" means (a) any direct or indirect sale or transfer by Developer of all of, a majority of, or a fifty percent interest in, or a controlling interest in, Developer to any Affiliate of Developer, provided Developer provides the District evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that such sale or transfer is to an entity that is an Affiliate of Developer, or (b) the creation of one or more joint ventures, limited liability companies or other entities under the Control of Developer or its Affiliate, created for the purpose of holding fee title to all or a portion of the Project in which the partners, members or other owners comprise, directly or indirectly, Developer or its Affiliate and the party or parties making additional equity contributions, and in which Developer or its Affiliates serves as general partner, managing member or equivalent, and such direct or indirect sales or transfers required to effectuate same, or (c) any direct or indirect sale or transfer of a non-controlling interest in Developer. In the case of subsection (a), (b) or (c), above, any such Permitted Transfer shall not be effective unless and until Developer provides the District (i) at least ten (10) Business Days' prior written notice of any such Permitted Transfer, (ii) evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that, after any such

Permitted Transfer, Developer or a Developer Affiliate shall remain in Control of any joint venture transferee entity and the management and construction of the Project, and (iii) evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are not Prohibited Persons.

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

"**Prohibited Person**" shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or

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

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

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

(E) Any Person suspended or debarred by HUD or by the District of Columbia government; or

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

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

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

"Project Drawings" are, collectively, the Concept Plans, Schematic Plans, Design Development Plans, and Construction Plans and Specifications for the Project, and include any changes to the foregoing.

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

"Property" means all right, title, and interest of District in and to the real property located at 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Square 1026, Lots 97, 98, 99, 100, 101, 102 and 103 as more particularly described on Exhibit A, attached hereto and incorporated herein by reference, together with all appurtenances and improvements located thereon as of the Effective Date.

"Purchase Price" means the price Developer shall pay for the acquisition of the Property pursuant to Section 2.1.2 hereof.

"Remediate" or **"Remediation"** means any one or more of the following actions: mitigation, abatement, treatment, removal, containment, corrective action, monitoring, and/or the implementation and maintenance of engineering controls (such as vapor barriers or vapor mitigation systems) or institutional controls (such as groundwater use restrictions).

"Residential Unit" is any unit constructed as part of the Project to be developed, leased, and used for residential purposes.

"Resolution" is defined in the Recitals.

"Scheduled Closing Date" is defined in Section 6.1.1.

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Project; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior

material samples; and (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use.

"**Second Notice**" means that notice given by Developer to District in accordance with Sections 4.2.2 and 4.3 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS [OR FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"Settlement Agent" means Commonwealth Land Title Insurance Company, as agent for the title company selected by Developer and mutually acceptable to Developer and District.

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

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

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

"**Title Objections**" is defined in Section 2.4.1.

"**Title Objection Date**" is defined in Section 2.4.1.

"Transfer" means any sale, assignment, conveyance, lease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of the Property or Improvements now or hereafter constructed on the Property, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same, except for a Permitted Transfer. As used in this Agreement, a Transfer shall also be deemed to have occurred if: (i) there is a change in Control of Developer or the managing member of Developer from that existing as of the Closing Date or (ii) the equity or development participation requirements contained in the CBE Agreement are no longer satisfied.

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

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

ARTICLE 2
CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer and Developer shall purchase from District, all of District's right, title, and interest in and to the Property.

2.1.2 The Purchase Price shall be Two Million Seven Hundred Fifty Four Thousand Dollars ($2,754,000.00). Developer shall pay the Purchase Price at Closing by cash, certified check or wired funds.

2.2 DEPOSIT

Prior to the Effective Date, Developer submitted to District a letter of credit in the amount of $25,000 ("**RFEI Deposit**"), as part of Developer's response to the Request for Expressions of Interest issued by the District on August 6, 2012. Not later than three (3) days after the Effective Date, Developer shall deliver to the District a letter of credit in the amount of Two Hundred Seventy-Five Thousand Four Hundred Dollars ($275,400.00) (the "**LDA Deposit**", together with the RFEI Deposit, the "**Deposit**"). At Closing, District shall release the Deposit to Developer. The Deposit may be drawn on by District in accordance with the terms of Section 8.2 hereof.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) on the District Property using experts of its own choosing and to access the District Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and Developer is not then in default hereunder beyond any applicable notice and cure period (with the exception of any default of the provisions of Section 2.3.1(c)(ii) and (iii), for which Developer's right to enter the property for the purposes described herein shall terminate immediately upon default), Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the Property; provided, Developer's Agents shall not conduct any invasive Studies without the prior written consent of District and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies.

(b) Developer and Developer's Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including

transportation and disposal of materials, provided, however, subject to Section 2.3.1(d), District shall, reasonably cooperate, as reasonably necessary, and to the extent permitted by Applicable Law, at no cost to District, with Developer in Developer's pursuit of such licenses. In addition, Developer and Developer's Agents shall be obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the Property and while conducting any Studies.

(c) Prior to entering on the Property, Developer shall provide District (i) written notice (which may be by email), including a written description of the intended Studies, (ii) evidence of insurance, as required under the terms of this Agreement, and (iii) copies of any required licenses and notices in accordance with Section 2.3.1(b). District acknowledges that prior to the Effective Date, Developer delivered to District satisfactory evidence of insurance as required under the terms of this Agreement.

(d) In the event that, prior to Closing, Developer or any of Developer's Agents discover on the Property any materials or waste while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify District and DDOE within three (3) Business Days after its discovery of such Hazardous Materials. In the event that, prior to Closing, the performance of the Studies by Developer or any Developer's Agent results in any investigative-derived waste which is determined to be Hazardous Materials, Developer shall submit a written notice of a proposed plan for the removal of such investigative-derived Hazardous Materials in accordance with applicable Environmental Laws (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials to be disposed and a detailed account of the proposed removal and disposal of such Hazardous Materials, including the name and location of the Hazardous Materials disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, if any, District and/or DDOE shall notify Developer of its findings, and, whether or not District performs its own investigation, District shall notify Developer by written notice of its approval or disapproval of the Developer's proposed Disposal Plan.

(e) In the event DDOE disapproves Developer's proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek consultation by DDOE prior to any resubmission of a revised Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall perform the actions required under the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not, prior to Closing, be required to remove, Remediate or dispose of any Hazardous Materials not disturbed by Developer during Developer's performance of its Studies. Within seven (7) Business Days after the disposal by Developer of any such Hazardous Materials from the Property, Developer shall provide District such written evidence and receipts confirming the proper disposal of such Hazardous Materials removed from the Property.

(f) Developer acknowledges it has received and reviewed the Environmental Reports.

Developer further acknowledges and agrees it has had the opportunity, prior to the Effective Date, to fully examine the Property and perform all Studies required by Developer to enter into this Agreement. Accordingly, Developer shall not have the right, from and after the Effective Date, to (i) object to any condition that may be discovered, (ii) offset any amounts from the Purchase Price, and/or (iii) terminate this Agreement as a result of such Studies.

(g) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) as provided in Section 11.2 below.

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

(i) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11 (to the extent applicable) and Developer shall restore the Property after such tests are completed if Developer does not proceed to Closing for any reason other than District Default.

(j) Developer expressly agrees that pursuant to applicable Environmental Laws, Developer is the sole generator of any investigative-derived Hazardous Materials resulting from the performance of the Studies and requiring removal from the Property, and agrees to assume all liabilities and responsibilities regarding generation, transport, and disposal of said Hazardous Materials.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban Land Association (mapping unit 11). Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Official Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), the District's Underground Storage Tank Disclosure Form is attached as Exhibit E.

Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 1200 First St. NE, 5th Floor, Washington, DC 20002, telephone (202) 535-2600. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION DETERMINED AS OF THE EFFECTIVE DATE, WITH ALL FAULTS AS OF THE EFFECTIVE DATE AND, EXCEPT AS SET OUT IN SECTIONS 2.7 and 3.1 AND THE SPECIAL WARRANTY OF TITLE IN THE DEED, DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON EXCEPT AS SET FORTH IN SECTIONS 2.7 AND 3.1 AND THE SPECIAL WARRANTY OF TITLE IN THE DEED. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT. Subject to Section 2.5 and notwithstanding the foregoing, if the condition of the Property at Closing is materially different than the condition of the Property on the Effective Date (unless such material difference is a result of an act or omission of Developer), then Developer may, at its option, terminate this Agreement by written notice to District, whereupon the Deposit shall be released to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

2.4 TITLE

2.4.1 Beginning on the Effective Date until and including the date that is sixty (60) days thereafter ("**Title Objection Date**"), Developer shall have the opportunity to obtain a title insurance commitment for an owner's policy of title insurance and an ALTA survey of the Property. On or before the Title Objection Date, Developer shall provide District with a copy of such title insurance commitment (including any documents referred to in such title insurance commitment) and ALTA survey along with written notice to District of any title or survey matter(s), encumbrance(s) or exception(s) discovered or disclosed by the title insurance commitment or ALTA survey affecting the Property that are not acceptable to Developer ("**Title Objections**"). Within thirty (30) days of receiving written notice of any Title Objections, District shall provide Developer written notice of any Title Objections that it is willing to cure prior to Closing, as determined in its sole and absolute discretion. If District does not provide

Developer with written notice that it is willing to cure all Title Objections, Developer may, at its option, terminate this Agreement by written notice to District given no later than five (5) days after (i) the date District provides notice that it is unwilling to cure all Title Objections or (ii) the expiration of the period during which District had the opportunity to deliver notice of its willingness to cure all Title Objections, whereupon the Deposit shall be released to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein. Except to the extent that Developer notifies District of any Title Objections prior to the Title Objection Date, each item reflected in the title insurance commitment and the ALTA survey shall have been deemed to be a Permitted Exception for all purposes under this Agreement.

2.4.2 At Closing, District shall convey good, marketable and insurable title to the Property and subject only to the Permitted Exceptions. The **"Permitted Exceptions"** shall be the following collectively: (i) all title matters, encumbrances, easements, rights-of-way or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; and (v) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date.

2.4.3 From and after the Effective Date through Closing, District represents, warrants, and covenants that it has not and will not take any action that would cause a change to the condition of title to the Property existing as of the Effective Date, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS

In the event of a casualty, District shall not be required to rebuild any improvements located on the Property. In such event, Developer shall have no right to offset any amounts from the Purchase Price, or to terminate this Agreement as a result of such casualty and, subject to the terms of Section 5.1, Developer shall be required to proceed to Closing in accordance with the terms of this Agreement. The foregoing is not intended and shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in Section 2.3.1 and Article 11 hereof.

2.6 CONDEMNATION

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

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

2.6.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, the Deposit shall be released to Developer and the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to any and all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, and the condemnation proceeds shall be paid to Developer at Closing; provided, however, that if some or all compensation has not been actually paid to the Court registry by the condemning authority on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District, and the amount of any condemnation proceeds actually paid to District prior to the Closing Date shall be credited against the Purchase Price and treated as part of the Purchase Price already paid. In either event, District (as the seller hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation, except as expressly provided herein. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

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

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution, delivery and performance of this Agreement by District and the consummation of the transactions contemplated hereby have been approved by all necessary parties and District has the authority to dispose of the Property. Upon the due execution and delivery of this Agreement by Developer, this Agreement constitutes the valid and binding obligation of District, enforceable in accordance with its terms.

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

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending (or to the best of the actual knowledge of District, threatened) against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending (or to the best of the actual knowledge of District, threatened) against District which, if decided adversely to District, would impair District's ability to enter into and perform its obligations under this Agreement. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

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

(e) Except as set forth in the Environmental Reports, to District's actual knowledge, no Hazardous Materials have been released, deposited, stored or placed in, on, under or near the Property or improvements thereon, and to District's actual knowledge, no such Hazardous Materials exist in, on, or under the Property or improvements thereon such that there existence would violate Environmental Laws. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

(f) There is no pending or, to the best of the District's actual knowledge, threatened condemnation or eminent domain proceeding with respect to the Property. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall be true as of the Effective Date and at Closing and Developer's right to sue for a breach of such representations and warranties shall survive Closing for a period of one (1) year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.2.1 Developer hereby represents, and warrants to District as follows:

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

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

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

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

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

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

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

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall be true as of the Effective Date and at Closing and District's right to sue for a breach of such representations and warranties shall survive Closing for a period of one (1) year. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

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

4.1 PROJECT DRAWINGS

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

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

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

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

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

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

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

(c) Upon Developer's submission of all Project Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Improvements

have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.2 DISTRICT REVIEW AND APPROVAL OF PROJECT DRAWINGS

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

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Project Drawings by Developer and provide a written response thereto, within ten (10) Business Days after its receipt of the same. If District fails to respond with its written response to a submission of any Project Drawings within such ten (10) Business Day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to approve, conditionally approve, or disapprove such Project Drawings within five (5) Business Days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given, provided such Project Drawings comply with the requirements contained in Section 4.1.2 and are consistent with the Concept Plans and Development Plan.

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

4.2.4 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Project Drawing, Developer may request such extension in writing prior to such deadline, and, for good cause shown, District may elect in its reasonable discretion to grant such extension by written notice to Developer.

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

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No Material Changes to the Approved Plans and Specifications shall be made without District's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. If Developer desires to make any Material Changes to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for such approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) Business Days. Failure to respond within five (5) Business Days after a Second Notice shall be considered a deemed approval, provided the Material Change is consistent with the Concept Plans and Development Plan. Any approved or deemed approved Material Change shall become part of the Approved Plans and Specifications.

4.4 INTENTIONALLY OMITTED

4.5 APPROVAL OF GUARANTORS

4.5.1 The Development and Completion Guaranty required pursuant to this Agreement shall be from one or more Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person.

4.5.2 At any time upon District's request, but in no event later than thirty (30) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its reasonable discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred District shall so notify Developer within ten (10) Business Days after receipt of the updated Guarantor Submissions. Developer shall, within ten (10) Business Days after receipt of such notice from District, request District's approval of a substitute proposed guarantor, which request shall include the Guarantor Submissions for the proposed guarantor. District shall approve or disapprove the Guarantor Submissions for the proposed guarantor in good faith within ten (10) Business Days after Developer requests District's approval of same. If District fails in good faith to approve such substitute guarantor prior to Closing based on reasonable objections, then Developer shall have the right, at its option, to terminate this Agreement by written notice to the District, whereupon the Deposit shall be returned to Developer and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

4.6 COMMUNITY PARTICIPATION PLAN

Prior to the Effective Date, Developer provided District a description of Developer's program for public involvement, education and outreach with respect to the Project, including input from the community that is impacted by the Project as it is designed, developed, constructed and operated (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program, and includes, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. More specifically, the Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Developer shall submit such documentation to District promptly following each such meeting. The Developer's initial Community Participation Program is attached hereto as Exhibit K. Within sixty (60) days prior to Closing, Developer shall provide to District an updated Community Participation Plan, for District's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

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

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

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

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

(e) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible.

This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.

(f) Title to the Property shall be in the condition required under Section 2.4.2, subject only to the Permitted Exceptions.

(g) Developer shall have obtained, or cause to have obtained by one or more of Developer's members or partners or any Affiliate of Developer, all Debt Financing, Mezzanine Loans and Equity Investment necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(h) The Property shall be in materially the same condition as on the Effective Date as provided in Section 2.3.4 of this Agreement, exclusive of any changed conditions made or caused to be made by Developer during the completion of its Studies.

(i) Developer shall have obtained all Permits (through and including a building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

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

(k) District's authority pursuant to the Resolution, as may be further extended or supplemented, or otherwise to proceed with the disposition, as contemplated in this Agreement, shall not have expired.

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

(m) Developer shall have secured approval from the DC Board of Zoning Adjustment ("**BZA**") to permit construction of the Project pursuant to the Approved Plans and Specifications, which approval contains no additional material conditions or requirements by BZA, as reasonably determined by Developer in good faith.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's Default or Developer's failure to diligently pursue satisfaction of all the conditions to Closing set forth in Sections 5.1.1(g), (i), (j), (l), and (m) in good faith, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon the Deposit will be released to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, that in the case of District Default, Developer may proceed under Section 8.3 hereof; or (iii) delay Closing for up to ninety (90) days to permit satisfaction of the conditions to Closing set forth in

Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, provided the same is not the result of Developer's Default, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after the Deposit is released to Developer (unless failure to close was caused by District Default).

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to convey the Property and perform the other obligations it is required to perform on the Closing Date shall be subject to the following conditions precedent:

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

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

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

(d) Intentionally Omitted.

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

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

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

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

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

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

(k) Developer shall have obtained all Permits (through and including a building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

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

(m) Developer shall have obtained, or cause to have obtained by one or more of Developer's members or partners or any Affiliate of Developer, all Debt Financing, Mezzanine Loans and Equity Investment necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

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

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

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

(q) District's authority pursuant to the Resolution, as may be further extended or supplemented, or otherwise to proceed with the disposition, as contemplated in this Agreement, shall not have expired.

(r) Developer shall have secured approval from the BZA to permit construction of the Project pursuant to the Approved Plans and Specifications, which approval contains no additional material conditions or requirements by BZA, as reasonably determined by Developer in good faith.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District Default, District shall have the option, at its sole discretion, to (i) waive the condition and proceed to Closing, (ii) terminate this Agreement by written notice to Developer, whereupon the Deposit will be released to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, unless the failure of such condition was caused by Developer's Default under the terms of this Agreement in which case District shall be entitled to proceed under Section 8.2 hereof, or (iii) delay Closing for up to ninety (90) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (iii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.2.1 have been

satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, District may again proceed under clause (i) or (ii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Deposit to Developer (unless failure to close was caused by Developer Default).

ARTICLE 6
CLOSING

6.1 CLOSING DATE

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

6.1.2 Closing shall not occur later than the Scheduled Closing Date, except as provided in this Agreement or by the mutual agreement of the Parties, or except if delay results, despite the commercially reasonable efforts of Developer, from Municipal Delay or Force Majeure.

6.2 DELIVERIES AT CLOSING

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

(a) the Deed, in recordable form;

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

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

(d) any and all other deliveries required from District on the Closing Date under this Agreement, and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement, including, without limitation, a customary owner's affidavit

reasonably acceptable to both parties.

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

(a) the Purchase Price and any funds in excess of the Purchase Price, if so required by the Settlement Statement to be executed at Closing;

(b) any documents required to close on all of the Debt Financing, Equity Investments, and Mezzanine Loans, for Developer's construction of the Project;

(c) the fully executed Development and Completion Guaranty and a Payment Bond and Performance Bond from the general contractor for the Project or, at Developer's sole election, from Developer naming the District as a named obligee.

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

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

(f) copies of the Permits for the Project (through and including a building permit) required under Section 105A of Title 12A of the D.C. Municipal Regulations;

(g) Intentionally Omitted;

(h) copies of any amendments to the fully executed First Source Agreement and CBE Agreement;

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

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

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

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

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

(v) If reasonably requested by District in good faith, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full power and authority to enter into this Agreement, the Affordability Covenant, and the Construction and Use Covenant, that Developer has taken all limited liability company actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to its knowledge, based solely on a certificate from Developer, any contract or agreement to which Developer is a party or by which it is bound; and

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

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Deed, the Affordability Covenant and the Construction and Use Covenant.

6.3.2 At Closing:

(i) District shall be responsible for and shall pay the District of Columbia real property transfer tax imposed pursuant to Title 47, Chapter 9 of the D.C. Official Code (2001 ed., as amended), to the extent not exempt; and

(ii) Developer shall be responsible for and shall pay: (1) all District of Columbia recordation taxes, (2) all Settlement Agent's fees and costs, (3) title search costs, (4) title insurance premiums and endorsement charges, (5) survey costs, and (6) all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, all costs and expenses stated herein to be borne by Developer, and all of its respective accounting, legal and appraisal fees.

ARTICLE 7
DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

7.1.1 Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the Schedule of Performance and the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer.

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

7.1.3 As further assurance of the above and of the covenants contained in the Construction and Use Covenant, Developer shall require its general contractor for the Project to obtain, or, at Developer's sole election, Developer shall obtain, a Payment Bond and Performance Bond in form and substance acceptable to the District, naming the District as a named obligee. The Payment Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials indicated in the Final Project Budget. The Performance Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials indicated in the Final Project Budget and shall ensure completion of the Project in accordance with the Approved Plans and Specifications. Developer shall deliver to the District an original of such Payment Bond and Performance Bond at, or prior to, Closing.

7.2 ISSUANCE OF PERMITS

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

7.3 SITE PREPARATION

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

7.4 AFFORDABILITY COVENANT

Subject to the terms of the Affordability Covenant, the Residential Units shall be constructed as follows:

(a) No less than three (3) of the Residential Units shall be priced as affordable for households earning below 80% of Area Median Income; and

(b) No less than three (3) of the Residential Units shall be priced as affordable for households earning below 50% of Area Median Income.

7.5 INTENTIONALLY OMITTED

7.6 GREEN BUILDING

Developer shall design, develop and construct the Project, and all portions thereof, in a manner in compliance with the Green Building Act and, as required by the Green Building Act, shall fulfill or exceed the current edition of the Green Communities standard, or a substantially similar standard, for residential development. Simultaneously with Developer's submission of its building permit application for the Project, Developer shall submit a Green Communities checklist, or a checklist of a substantially similar standard as may be required by the Leadership in Energy & Environmental Design program ("LEED"), to the D.C. Department of Consumer and Regulatory Affairs indicating that the Project is designed to include sustainable design features such that the Project is anticipated, upon the Project's completion by Developer, to satisfy the standards of Green Communities, or of a substantially similar standard, and to achieve the certification required by the Green Building Act. Upon Developer's completion of construction of the Project, Developer shall use commercially reasonable efforts to register the Project with Enterprise and obtain Green Communities certification, or register the Project with the U.S. Green Building Council and obtain a LEED certification, substantially similar to the Green Communities Standard, for the Project.

7.7 OPPORTUNITY FOR CBEs

As of the Effective Date, Developer has executed the CBE Agreement and agrees to comply with and maintain the same for the term thereof.

7.8 FIRST SOURCE AGREEMENT

As of the Effective Date, Developer has executed the First Source Agreement and agrees to comply with and maintain the same for the term thereof.

ARTICLE 8
DEFAULTS AND REMEDIES

8.1 DEFAULT

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

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

8.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of Developer Default under this Agreement, District may, as its sole remedies, (i) terminate this Agreement and, as liquidated damages, draw on the Deposit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement, or (ii) pursue equitable relief, including specific performance of Developer's obligations hereunder. If District elects to terminate this Agreement, upon such termination, all plans and specifications with

regard to the development and construction of the Project, including, without limitation, the Project Drawings and reports and work product resulting from the Studies produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment.

8.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of District Default under this Agreement, Developer may elect to pursue, as its sole remedy:

(i) terminate this Agreement and receive a return of the Deposit, whereupon Developer shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, or

(ii) pursue any other remedies available in equity, including specific performance.

In no event shall District be liable for any monetary damages, including compensatory, consequential, punitive or special damages hereunder.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

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

ARTICLE 9
FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources of all Equity Investments, Debt Financing and Mezzanine Loans, affordable housing financing and costs of issuance necessary to obtain such funds), which plan is attached hereto as Exhibit H (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). Developer shall not modify the Project

Funding Plan without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

9.2 DEBT FINANCING AND MEZZANINE LOANS

9.2.1 Beginning at Closing (and as further provided in the Construction and Use Covenant) and ending on the date of Final Completion (as defined in the Construction and Use Covenant), Developer shall not obtain any Debt Financing or Mezzanine Loans or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval, provided such Debt Financing, Mortgages or Mezzanine Loans comply with the requirements contained in Section 9.2.2 and Developer delivers to District the documents required under Section 9.2.3 as part of its request.

9.2.2 Any such Debt Financing, Mortgage and Mezzanine Loan given prior to Final Completion shall (i) secure a bona fide indebtedness to an Institutional Lender or such other lender reasonably approved by the District, the proceeds of which shall be applied only to the costs identified in the Final Project Budget and to the payment of the Purchase Price; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation prior to Final Completion; and (ii) the amount thereof, together with all other funds available to the Developer shall be sufficient to complete construction of the Project.

9.2.3 At least ten (10) Business Days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing, Mortgage or Mezzanine Loan as provided above, such documents as District may reasonably request, including, but not limited to, copies of:

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

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

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

9.2.4 Any Mortgagee or holder of a Mezzanine Loan may request that District enter into an agreement with such Mortgagee or holder providing such Mortgagee or holder with

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

9.3 PROJECT BUDGET

9.3.1 As of the Effective Date, Developer has provided to District its initial Project Budget, which is attached hereto as Exhibit I and incorporated herein.

9.3.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. Upon approval by District, such revised Project Budget shall be the "**Final Project Budget**". Such Final Project Budget shall be referenced in the Construction and Use Covenant.

9.3.3 Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

9.4 PUBLIC FINANCING

District shall have no obligation to provide any financing, subsidy or financial assistance of any kind to the Project. Developer is encouraged to seek financing, subsidies and financial assistance from other government agencies including, without limitation, the District of Columbia Department of Housing and Community Development.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion; provided that no such approval shall be required for (i) an assignment of this Agreement to an Affiliate; or (ii) any transfer due to death or incapacity of a Member or for estate planning purposes.

10.2 TRANSFER

Prior to Final Completion (as defined in the Construction and Use Covenant) of the Project, Developer, and its successors and assigns, shall not make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Developer shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request. Notwithstanding any contrary provision contained in this Agreement, upon Completion of Construction (as defined in the Construction and Use Covenant) of the core and shell of the retail portion of the Improvements, Developer may Transfer the retail portion of the Property without the prior approval of District; provided, however, that any such Transfer shall not be effective unless and until Developer provides to District written notice of its intent to Transfer, which notice shall include the identity of the proposed transferee, evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are in good standing in the District of Columbia and not Prohibited Persons, and such other documentation or information that District may reasonably request. Notwithstanding any contrary provision contained in this Agreement, Permitted Transfers shall be permitted without District's prior written approval.

10.3 NO UNREASONABLE RESTRAINT

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

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer or its contractors, as applicable, shall carry and maintain in full force and effect the following insurance policies:

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

required to carry shall not be construed as any limitation on Developer's liability under this Agreement.

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

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

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

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

thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

11.2 INDEMNIFICATION

Developer shall indemnify, defend (with counsel reasonably satisfactory to District), and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and caused by the acts or omissions of Developer, its Members, agents, employees, or contractors or Developer's Agents; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence, fraud or willful misconduct of District and Developer shall have no liability for discovery of any existing fact pertaining to the Property that results in claims against the District. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

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

With a copy to:

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

12.2 TO DEVELOPER

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

1300 H Street NE LLC
c/o Westmill Capital Partners LLC
1519 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
Attn: Benjamin Miller

With a copy to:

Holland & Knight LLP
800 17th Street, NW
Suite 1100
Washington, D.C. 20006
Attn: Robert Boyd, Esq.

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

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

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

13.2 FORCE MAJEURE AND MUNICIPAL DELAYS

Neither Party, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, or commence or complete construction on the Project, in the event of forced delay in the performance of such obligations due to Force Majeure, or, in

the case of Developer, a Municipal Delay. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure or Municipal Delay event, the time or times for performance of the obligations of the Party suffering the delay, including the Outside Completion Dates in the Schedule of Performance directly affected by such delay, shall be extended on a day-for-day basis for the period of the Force Majeure or Municipal Delay; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure or Municipal Delay event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; provided, however, that, in the case of a Municipal Delay, Developer shall use commercially reasonable efforts to notify the District in advance in writing (the "**Potential Municipal Delay Advance Notice**") at least fifteen (15) Business Days prior to the expiration of the response time required for the applicable Permit under Applicable Law or, if there is no express response time for such Permit under Applicable Law, then the typical response time for a similarly situated Permit request, provided further that in no event shall a Municipal Delay occur until the date that is the later to occur of sixteen (16) Business Days following District's receipt of the applicable Potential Municipal Delay Advance Notice and the date immediately following expiration of the applicable Permit response time; (b) in the case of a Municipal Delay, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance, as extended, if at all, pursuant to the terms and provisions of this Section 13.2, and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure or Municipal Delay, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure and Municipal Delays shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Developer.

13.5 TITLES OF ARTICLES AND SECTIONS

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

13.6 SINGULAR AND PLURAL USAGE; GENDER

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

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.9 COUNTERPARTS

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

13.10 TIME OF PERFORMANCE

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

13.11 SUCCESSORS AND ASSIGNS

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

13.12 THIRD PARTY BENEFICIARY

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

13.13 WAIVER OF JURY TRIAL

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

13.14 FURTHER ASSURANCES

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

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

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

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void.

13.17 SEVERABILITY

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

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.19 NO PARTNERSHIP

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

13.20 EACH PARTY TO BEAR ITS OWN COSTS

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

13.21 APPROVAL BY PARTY

Whenever the consent or approval of a party is required by the other, that consent or approval will not, unless otherwise provided in this Agreement, be unreasonably withheld, conditioned or delayed.

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

DISTRICT:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development pursuant to delegation of authority contained in Mayor's Order _____.

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

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

DEVELOPER:

1300 H STREET NE LLC,
a District of Columbia limited liability company

By:_____
Name:_____
Title:_____

Exhibits:

Exhibit A – Legal Description of Property
Exhibit B – Deed
Exhibit C –Affordability Covenant
Exhibit D – Construction and Use Covenant
Exhibit E – Underground Storage Tank Disclosure Form
Exhibit F – Development and Completion Guaranty
Exhibit G – Schedule of Performance
Exhibit H – Project Funding Plan
Exhibit I – Initial Project Budget
Exhibit J – Intentionally Omitted
Exhibit K – Initial Community Participation Plan
Exhibit L—CBE Agreement
Exhibit M—First Source Agreement
Exhibit N – Concept Plans

Exhibit A
Legal Description of Property

That certain real property located at 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Square 1026, Lots 97, 98, 99, 100, 101, 102 and 103.

Exhibit B
Deed

Exhibit C
Affordability Covenant

Exhibit D
Construction and Use Covenant

Exhibit E
Underground Storage Tank Disclosure Form

Exhibit F
Development and Completion Guaranty

Exhibit G
Schedule of Performance

Exhibit H
Project Funding Plan

Exhibit I
Initial Project Budget

Exhibit J
Intentionally Omitted

Exhibit K
Initial Community Participation Plan

Exhibit L
CBE Agreement

Exhibit M
First Source Agreement

Exhibit N
Concept Plans

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (this "**Covenant**") is made as of the ___day of _____, 20_ ("**Effective Date**"), by 1300 H STREET NE LLC, a District of Columbia limited liability company and its successors and assigns (the "**Developer**") having an address of 1519 Connecticut Avenue, N.W., Suite 200, Washington, DC 20036, for the benefit of 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. District is the fee simple owner of certain real property located in the District of Columbia as further described in **Exhibit A** (the "**Property**").

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-3. District and Developer entered into that certain Land Disposition Agreement dated _____, 20__, as the same may be amended ("**Development Agreement**") whereby District and Developer agreed upon the terms under which District agreed to convey the fee simple interest in the Property to Developer and for Developer to develop and construct the Project (defined below) and to sell and/or manage and lease the Affordable Units to be constructed in the Project.

R-4. In accordance with the Development Agreement and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

R-5. District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will construct, maintain, sell and/or lease the Affordable Units in the Project.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer hereby declare, covenant and agree as follows:

ARTICLE I
DEFINITIONS

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

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that no less than six (6) of the approximately twenty-four (24), or, at Developer's election, thirty (30), Residential Units to be contained in the Project are to be Affordable Units and allocated as follows: (i) no less than

three (3) of the Affordable Units shall be reserved for Households with an Annual Household Income at or below 50% AMI and (ii) no less than three (3) of the Affordable Units shall be reserved for Households with an Annual Household Income at or below 80% AMI.

Affordable Unit Marketing Plan: means Developer's plan for marketing the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Affordable Unit: means each Residential Unit that will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index.

Affordable Unit Index: is an index of the Affordable Units contained in the Project, that identifies: (i) unit number (or similar identifier), floor, and location for each Affordable Unit and whether each Affordable Unit is a Rental Affordable Unit or For Sale Residential Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage and number of bedrooms of each Affordable Unit and a schematic drawing showing the layout of the unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Residential Units; (v) a listing or schedule of the amenities, services, upgrades, parking, and other facilities that will be offered as an option at an additional upfront or recurring cost or fee to the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Agency: means, as of the Effective Date, the D.C. Department of Housing and Community Development, pursuant to Mayor's Order 2009-112 (effective June 18, 2009), or such other agency of the District of Columbia government that may subsequently be delegated the authority of the Mayor to monitor, enforce or otherwise administer the affordable housing requirements of the District of Columbia government.

AMI: means the most current "area median income" (also known as "median family income" or "MFI") for a household of four persons in the "Washington Metropolitan Statistical Area" as periodically published by HUD, and adjusted for Household size without regard to any adjustments made by HUD for the purposes of the programs it administers.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

Annual Report: has the meaning given in Section 4.10.

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

Certificate of Purchaser Eligibility: means a certification executed by a Household prior to its purchase of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income to the Certifying Authority and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certificate of Tenant Eligibility: means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Developer, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certification of Income: means a certification made by a Certifying Authority that verifies that the Annual Household Income of a Qualified Tenant or Qualified Purchaser, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Developer that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Developer's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

Certification of Residency: means a certification made by an Affordable Unit Tenant or Affordable Unit Owner that states that the Affordable Unit Tenant or Affordable Unit Owner occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

Certifying Authority: means an entity or entities approved by the Agency pursuant to Section 2.4.

Designated Affordability Level: means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

Developer: is identified in the preamble of this Covenant.

For Sale Affordable Unit: means an Affordable Unit that shall be sold to a Qualified Purchaser.

Foreclosure Notice: is defined in Section 8.4.

Household(s): means all persons who will occupy the Affordable Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements as allowable by this Covenant.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of an Affordable Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for For Sale Affordable Units.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the District of Columbia located in the Recorder of Deeds.

Market-Rate Unit: is each Residential Unit that is not an Affordable Unit.

Maximum Allowable Rent: as defined in Section 4.4.2.

Maximum Annual Household Income or **MAXI**: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to (a) Section 4.5.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to the procedures contained in **Schedule 3** attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or **MINI**: is the minimum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to (a) Section 4.5.2 for Rental Affordable Units and (b) Section 5. 2.1 for For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

Mortgagee: means the holder of a Mortgage.

OAG: means the Office of the Attorney General for the District of Columbia.

Occupancy Standard: means the minimum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit	
Studio/Efficiency	1	
1	1	
2	2	
3	4	
4	6	
5	8	
6	10	

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Over-Income Tenant: as defined in Section 4.6.5.

Owner: means, in the context of Rental Affordable Units, Developer, and in the context of For Sale Affordable Units, Developer for so long as Developer owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

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

Project: means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property pursuant to the Development Agreement.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit, (ii) shall occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, (iv) shall use, occupy, hold and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Unit to a Qualified Purchaser) and this Covenant, and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Qualified Tenant: means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence during its lease of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Rental Affordable Unit: means an Affordable Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

Rental Formula: is defined in Section 4.4.2.

Residential Unit: means an individual residential unit constructed as part of the Project.

Sale: is defined in Section 5.1.

Transferee: is defined in Section 5.8.

Utilities: means water, sewer, electricity, and natural gas.

ARTICLE II
AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** Developer shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *Affordable Unit Index.* As of the date of this Covenant, District has approved the Affordable Unit Index, which is attached hereto as Exhibit C. Developer shall not amend or modify the Affordable Unit Index, except to the extent permitted under Section 4.6.6, without the Agency's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Any such approved amendment or modification shall be recorded in the Land Records as an amendment to this Covenant.

2.2.2 *Unit Mix.* The distribution of Affordable Units shall be proportional to that of the Market-Rate Units (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 *Size.* The Affordable Units shall be of a size substantially similar to the Market-Rate Units, provided that Affordable Units may be the smallest size of each market rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be substantially similar to the appearance, finish and durability of the exterior finishes of the Market-Rate Units.

2.2.5 *Interior Finishes.* Developer agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be functionally equivalent (i.e., different but perform the same function) to the Market-Rate Units.

2.2.6 *Affordable Unit Location.* Affordable Units shall be disbursed throughout the second (2^{nd}) through fourth (4^{th}) floors of the Project and shall not be concentrated on any one floor or within a tier or section of the Project; provided, however, that Developer may, but shall not be required to locate any Affordable Units on the fifth (5^{th}) floor, to the extent the Project has a fifth (5^{th}) floor.

2.3 **Marketing Affordable Units.**

2.3.1 *Marketing Plan.* Developer shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Developer may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.3.2 *Housing Locator.* When an Affordable Unit becomes available for rent or for sale, Owner shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008, and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

2.4 **Certifying Authority.** Each Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that

Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

ARTICLE III
USE

3.1 **Use.** Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Units.

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances, flooring and cabinetry) of the Affordable Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance and repair without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency.

ARTICLE IV
RENTAL OF AFFORDABLE UNITS

4.1 **Lease of Rental Affordable Units**. In the event the Project contains Rental Affordable Units, Developer shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Developer shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider shall be executed by Developer and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Unit Lease Rider, a Certification of Income and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Developer to Maintain Copies.* Developer shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 **Rental Affordable Unit Admissions Process.**

4.3.1 *Referrals.* Developer may obtain referrals of prospective tenants of Rental Affordable Units from federal and District of Columbia agencies, provided such referrals comply with the requirements of this Covenant. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Developer shall select Qualified Tenants through a lottery system or other system as otherwise approved by the Agency as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Developer shall consider each applicant in the order in which received by Developer, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Developer may reject any applicant if, after diligent review of such applicant's application, Developer determines in good faith that such applicant does not meet Developer's criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable District of Columbia and federal laws and is the same criteria used by Developer to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Developer shall provide the Agency with all documents evidencing Developer's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit.

4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term.* The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each Rental Affordable Unit shall be determined through the use of one of the two following formulas: (a) MAR = (AMI * DAL * OSF * 30%) /

12 – MU (if the Household pays any Utility costs directly to the Utility providers) or (b) MAR = (AMI * DAL * OSF * 30%) / 12 (if all Utility costs are included in the rent payment to Owner) ("**Rental Formula**"), where:

(1) AMI = see definitions

(2) DAL = Designated Affordability Level (%)

(3) OSF = Occupancy Standard Factor

(4) 30% = Thirty percent (30%)

(5) 12 = Number of months in the lease period

(6) MU = Monthly Utilities paid by the Affordable Unit Tenant. The utility schedule published by the District of Columbia Housing Authority shall be utilized to estimate the MU.

4.5 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is between the MAXI and MINI.

4.5.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through the use of the formula: MAXI = (AMI * DAL * HAF). Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1.

4.5.2 *Minimum Annual Household Income.* The Minimum Annual Household Income is determined by multiplying the total monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%). Examples of the calculation of the Minimum Annual Household Income are included in the attached Schedule 1.

4.6 **Subsequent Lease Years**

4.6.1 *Use of Rental Formula.* Developer shall use the Rental Formula to determine the Maximum Allowable Rent in lease years after the first lease year.

4.6.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Developer shall obtain the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a Certification of Income completed by the Certifying Authority. Developer shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Developer with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Developer shall treat

such tenant as an Over-Income Tenant and charge market-rate rent, upon which Developer shall designate another Residential Unit as a Rental Affordable Unit in accordance with Section 4.6.6.

4.6.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Certifying Authority shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market-Rate Unit, whereupon Developer shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

4.6.6 *Changes to Unit Location.* Developer may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Developer shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.6.7 *Rent from Subsidies.* Nothing herein shall be construed to prevent Developer from collecting rental subsidy or rental-related payments from any federal or District of Columbia agency paid to Developer and/or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with

the requirements of this Covenant. Such rental subsidy or rental-related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.7 **No Subleasing of Rental Affordable Units.** An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Developer shall not knowingly allow such Rental Affordable Unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion.

4.8 **Representations of Affordable Unit Tenant.** By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Agency and Developer, each of whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.9 **Representations of Developer.** By execution of a lease for a Rental Affordable Unit, Developer shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Developer is not collecting more than the Maximum Allowable Rent.

4.10 **Annual Reporting Requirements.** Beginning with the first occupancy of any Affordable Unit, Developer shall provide an annual report (**"Annual Report"**) to the Agency regarding the Rental Affordable Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Developer's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual Reports shall be retained by Developer for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Developer provides a report to an agency within the District government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the Agency. The Agency may request Developer to provide additional information in support of its Annual Report.

4.11 **Confidentiality.** Except as may be required by applicable law, including, without limitation to, the *District of Columbia Freedom of Information Act of 1976,* D.C. Code § 2-531 *et seq.* (2001), Developer, Certifying Authority and the Agency shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.12 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Developer. If Developer receives such notice, Developer shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V
SALE OF AFFORDABLE UNITS

5.1 **Sale of For Sale Affordable Units.** In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest ("**Sale**"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. In the event that Developer sells or transfers the entire residential portion of the Project, the purchasing Person shall not be required to be a Qualified Purchaser as defined herein.

5.1.1 *Maximum Sales Price.* The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "**Maximum Sales Price**") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level,

adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein. The Agency shall approve the Maximum Sales Prices for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2 *Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 3 attached hereto and incorporated herein. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales.** The following procedures shall apply to (i) Developer with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: MAXI = (AMI * DAL * HAF). Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). Examples of the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance, if applicable. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

5.2.2 *Sale.* A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit and (b) a Certification of Income is completed by a Certifying Authority within

ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3 *Resale.* Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the Agency to determine their eligibility to purchase the For Sale Affordable Unit.

5.3 **Closing Procedures and Form of Deed.**

5.3.1 *Owner to Provide Copy of Covenant.* Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20___, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit.* A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations.* The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the Certification of Income.

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable District of Columbia and federal laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400, *et*

seq. Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

5.5 **Representations of Owner**. By execution of a deed for a For Sale Affordable Unit, Developer (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 **Annual Certification of Residency**. During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.7 **Leasing For Sale Affordable Units**. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules).

5.8 **Transfers**. Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "**Transferee**"), such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 **Prohibition on Occupancy**. In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 **Progress Reports**. Until all initial Sales of For Sale Affordable Units are completed, Developer shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale or rental of Affordable Units.

ARTICLE VI
DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Owner, Affordable Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the Agency, the District shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 **No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.3 **Right to Attorney's Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the District prevails, shall pay District all of its costs and expenses, including reasonable attorney fees, incurred in connection with District efforts to enforce this Covenant. If OAG 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 OAG prepared for or participated in any such action.

ARTICLE VII
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Unit and shall run with the land as of the Effective Date through the Affordability Period; provided, however, that the District hereby acknowledges and agrees that in no event shall this Covenant be binding on, apply to, or other affect or encumber the retail portion of the Project. The rights and obligations of District, Developer, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided, however, that all rights of District pertaining to the monitoring and/or enforcement of the obligations of Developer or Affordable Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII. Notwithstanding any contrary provision contained herein, and upon the creation of separate tax and assessment lots for the residential and the retail portion of the Project, at the request of Owner, District and Owner will amend this Covenant by inserting the legal description for the residential portion of the Project in the place of Exhibit A. **[Notwithstanding any contrary provision contained herein, in the event the Property and the property located at 1306 and 1308 H Street, NE, Washington, DC (the "Adjacent Property") are combined into one (1) new record lot, for purposes of clarification, this Covenant shall not be binding upon any portion of the Adjacent Property].**

ARTICLE VIII
MORTGAGES

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide the Agency written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Right of Purchase by the District.* The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage for such For Sale Affordable Unit in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Affordable Unit.

8.3.3 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

8.3.5 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.8.

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (a) the District's right to purchase, whether or not such right has been triggered, shall automatically expire; and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except

that upon sale of such unit by the For Sale Affordable Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

ARTICLE IX
AMENDMENT OF COVENANT

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing executed by a duly authorized official of the Agency on behalf of the District, and by a duly authorized representative of Owner of the Affordable Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE X
AFFORDABILITY PERIOD

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the "Affordability Period." If the Project contains For Sale Affordable Units, the "Affordability Period" for each For Sale Affordable Unit shall begin on the date of the Sale to the initial Affordable Unit Owner and continue for a period of forty (40) years. The Affordability Period for each For Sale Affordable Unit is not renewed upon each subsequent sale of the For Sale Affordable Unit. If the Project contains Rental Affordable Units, the "Affordability Period" for all of the Rental Affordable Units shall begin on the date of the lease of the first Rental Affordable Unit and continue for a period of forty (40) years, which date shall be memorialized in an acknowledgment executed by the District and Developer and recorded in the Land Records. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

ARTICLE XI
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 applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the District or the Developer from time to time. All notices to be sent to the District shall be sent to the following address:

DISTRICT:

Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue
Washington, DC 20020
Re: Housing Regulation Administration, Affordable Dwelling Unit Monitoring

All notices to be sent to Developer shall be sent to the address given in the preamble with a copy to:

Holland & Knight LLC
800 17th Street, NW
Suite 1100
Washington, DC 20006
Attn: Robert N. Boyd, Esq.

All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the District with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII
MISCELLANEOUS

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia (including the Superior Court of the District of Columbia) for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the District irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts of the District of Columbia (including the Superior Court of the District of Columbia), and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant 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.

12.3 **Time of Performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or District holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances**. Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability**. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.7 **Limitation on Liability**. Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability**. Any review or approval by the District or the Agency shall not be deemed to be an approval, warranty, or other certification by the District or the Agency as to compliance of such submissions, the Project, any Affordable Unit or Property with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the District that is filed among the Land Records; or otherwise contractually required. The District shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District's interest under this Covenant.

12.9 **No Third Party Beneficiary**. Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than District shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Developer**. As of the date hereof, Developer hereby represents and warrants to District as follows:

(a) This Covenant has been duly executed and delivered by Developer, and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Developer of any agreement or order which is binding on Developer; and

(c) Developer (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.11 **Federal Affordability Restrictions**. In the event the Property is encumbered by other affordability restrictions ("Federal Affordability Restrictions") as a result of federal funding or

the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("Conflict") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

[*Signatures on Following Pages*]

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____, witnessed by _____, its _____

WITNESS

DEVELOPER

1300 H STREET NE LLC,
A Delaware limited liability company

By:_____
Name: _____
Title: _____

By:_____[SEAL]
Name:_____
Title: _____

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT _____ who is personally known to be (or proved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Affordable Housing Covenant, bearing the date of the _____ personally appeared before me in said District of Columbia, and as _____, acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this ____ day of_____.

_____
Notary Public

My Commission Expires: _____

APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20___:

WITNESS

By:_____
Name: _____
Title: _____

DISTRICT OF COLUMBIA

By:_____
Name: _____
Title: _____

Approved for Legal Sufficiency
D.C. Office of the Attorney General

By: _____

EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT B

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between ("Resident" or "You") and , as Management Agent ("Manager") for ("Owner") for Apartment ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the District of Columbia dated _____, 20___, as may be subsequently amended, (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Unit, which requires the Resident's household income to be less than or equal to [____] of the area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION / INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease, the Manager shall request that the Resident provide the Certifying Authority with the following:

(i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,

(ii) all information pertaining to the Resident's household composition and income for all household members,

(iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Unit, as well as how to contact such sources, and

(iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Authority's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [ ]AMI or [ ] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a District policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the D.C. Department of Housing and Community Development, in its sole and absolute discretion.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

EXHIBIT C

Affordable Unit Index

SCHEDULE 1

Examples of Calculating Maximum Annual Household Income and Minimum Annual Household Income
[Assuming 2013 AMI of $107,300 for a family of four]

Maximum Annual Household Income for Rental Affordable Units and For Sale Affordable Units:

Q1: Does a two (2) person Household with a $55,000 annual income qualify under the Maximum Annual Household Income for an 80% AMI Affordable Unit?

A1: Yes. The Household makes less than the Maximum Annual Household Income for the 80% AMI Affordable Unit ($68,672) .

$107,300 (the 2013 AMI) * 0.8 * 80%= $68,672

Minimum Annual Household Income for Rental Affordable Units:

Q2: If the monthly Housing Cost for an 80% AMI Rental Affordable Unit is $1,643, would a 2 person Household with a $55,000 annual income have enough income to afford the cost of the Rental Affordable Unit?

A2: **Yes.** The Household's Annual Household Income is $55,000, which is more than $51,884.

$1,643 * 12 / 38% = $51,884.

Q3: Using the example above, if the monthly Housing Cost for a Rental Affordable Unit is $1,849, would the 2 person Household have enough income to afford the cost of the Rental Affordable Unit?

A3: **No.** The household's income is $55,000, which is less than $58,390.

$1,849 * 12 / 38% = $58,390.

Minimum Annual Household Income for For Sale Affordable Units:

Q4: If the monthly Housing Cost for an 80% AMI For Sale Affordable Unit is $1,500, would a 2 person Household with a $55,000 annual income have enough income to afford the cost of the For Sale Affordable Unit?

A4: **Yes.** The Household's income is $55,000, which is more than $43,902.

$1,500 * 12 / 41% = $43,902.

Q5: Using the example above, if the monthly Housing Cost for a For Sale Affordable Unit is $2,200, would the 2 person household have enough income to afford the cost of the For Sale Affordable Unit?

A5: **No.** The Household's income is $55,000, which is less than $58,537.
$2,200 * 12 / 41% = $58,537

SCHEDULE 2

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

i. *Condominium Fees, if applicable*: Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at $0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

Multi-Family Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

ii. *Homeowner Fees, if applicable*: Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at $0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

Single-Family Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

iii. *Monthly Hazard Insurance, if single family home*: Estimated to be $125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.

iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction ($69,100 in 2013) at current real estate tax rates ($0.85 per $100 in 2013).

v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Sale Price would be 5.40%.

vi. *Down payment*: Assume a down payment of 5% on the purchase of the Affordable Unit.

SCHEDULE 3

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula MRP = P x (F) + V ("Formula"), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

(1) As the result of the formula F = (1 + [((AMI Year m /AMI Year m-10) ^ (1/10) -1) +...((AMI Year k /AMI year k-10) ^ (1/10) -1) / n]) ^ n, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or

(2) As published by the Agency.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

(a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and

(b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair

market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level .

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters,

curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

DEVELOPMENT AND COMPLETION GUARANTY

This DEVELOPMENT AND COMPLETION GUARANTY (this "**Guaranty**") is made as of _____, 2013 ("**Effective Date**"), by _____ a _____ limited liability company ("**Guarantor**") –in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the "**District**").

RECITALS

A. 1300 H Street NE LLC ("**Developer**") and District have entered into a Land Disposition Agreement dated as of _____, 2013 (the "**LDA**"), concerning the sale by District to Developer of 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Lots 97, 98, 99, 100, 101, 102, and 103 in Square 1026 (the "**Property**").

B. Pursuant to the terms of the LDA, Guarantor is required to guaranty development and construction of the Project (as defined in the LDA) in the manner and within the timeframes pursuant to the terms of the LDA and Article II of the Construction and Use Covenant. The LDA further provides that on or before the Closing Date, and as a condition precedent to the Closing, Developer shall deliver this Guaranty, fully executed by the Guarantor, to District.

C. To induce District to enter into the LDA, Guarantor has agreed to guaranty development, construction and completion of the Project in accordance with Article II of the Construction and Use Covenant and the LDA.

NOW, THEREFORE, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Incorporation of Recitals; Definitions. The foregoing Recitals are incorporated in this Guaranty and made a part hereof by this reference to the same extent as if set forth herein in full. Defined terms used herein and not otherwise defined shall have the meanings given them in the LDA.

2. Representations and Warranties.

2.1 Solely with respect to itself, Guarantor warrants and represents to District as follows:

(a) the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it is bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it is bound;

(b) Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the LDA, this Guaranty, the Construction and Use Covenant, the Schedule of

Performance, the Approved Plans and Specifications, and the documents referenced in each of the foregoing;

(c) Guarantor (if Guarantor is not a natural Person) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business, and is in good standing, in the District of Columbia;

(d) Guarantor has been duly authorized to carry on its business, and to hold title to and own the property it owns, to execute, deliver and perform this Guaranty, and to consummate the transactions contemplated hereby and thereby;

(e) this Guaranty has been duly authorized, executed and delivered by Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights from time to time in effect;

(f) no actions, suits, or proceedings are pending or, to Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change (in comparison to any state of affairs existing before or after the date of this Guaranty) to (i) the business operations, assets or condition (financial or otherwise) of Guarantor, or (ii) the ability of Guarantor to perform, or of District to enforce, any material provision of this Guaranty (a "**Material Adverse Change**");

(g) no consent, approval or authorization of, or registration, declaration, or filing with, any governmental authority or any other Person is required that has not been obtained in writing by Guarantor, in connection with the execution, delivery and performance by Guarantor of this Guaranty and the transactions contemplated by this Guaranty;

(h) Guarantor is not insolvent (as such term is defined or determined for purposes of Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) as now or hereafter amended or recodified or any other bankruptcy law (collectively, the "Bankruptcy Code"), and the execution and delivery of this Guaranty will not make Guarantor insolvent;

(i) to Guarantor's knowledge, neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of Guarantor contains any untrue statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

(j) to Guarantor's knowledge, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein;

(k) Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments and governmental charges levied upon it or any of its

assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

(l) there has been no Material Adverse Change to Guarantor;

(m) there are no conditions precedent to the effectiveness of this Guaranty;

(n) Guarantor is not a Prohibited Person; and

(o) all financial statements delivered to District at any time by or on behalf of Guarantor (i) are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principals consistently applied, and there has been no Material Adverse Change in the financial position of Guarantor since the respective dates of (or periods covered by) such statements. Without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually (and solely managed) by Guarantor and not jointly with any spouse or other Person.

2.2 All of the representations and warranties in this Guaranty are true as of the Closing Date and will continue to be true throughout the term of this Guaranty as if remade at all times afterwards and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within ten (10) Business Days upon its discovering any breach of such representations or warranties.

2.3 Guarantor acknowledges that District is consummating the Closing in reliance upon the representations, warranties and agreements contained in this Guaranty. District shall be entitled to such reliance notwithstanding any investigation which has been made, has not been made or may be conducted by District or on District's behalf.

3. Guaranteed Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally, and jointly and severally, guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants contained in Article II, Section 3.3, and Article VIII of the Construction and Use Covenant. Further, except to the extent of District's gross negligence or willful misconduct, Guarantor absolutely, irrevocably, and unconditionally, and jointly and severally, agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations contained in Article II, Section 3.3, and Article VIII of the Construction and Use Covenant and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees). Upon the occurrence of any failure of Developer to fully and timely perform its agreements, covenants, and obligations contained in Article II, Section 3.3 and Article VIII of the Construction and Use Covenant, beyond any

applicable notice and cure period, upon request by District, Guarantor shall, at Guarantor's sole cost and expense, cure such default by or failure of Developer. The obligations of Guarantor set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

4. Liens. If any mechanic's or materialmen's liens should be filed, or should attach, with respect to the Property or the Improvements by reason of the construction of the Project, within thirty (30) days after Guarantor is advised of the filing of such liens, Guarantor shall take action to cause the removal or waiver of such liens, including, if necessary, the posting of security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District or any delay in Final Completion.

5. No Right of Subrogation. Guarantor hereby acknowledges that, until the obligations to develop, construct and complete the Project under the LDA and Article II of the Construction and Use Covenant are satisfied in full they will not be entitled to reimbursement or distribution from Developer or another guarantor on account of any sums paid by them pursuant to this Guaranty. Guarantor hereby acknowledges and agrees that Guarantor shall not have any right of subrogation by reason of payments or performance in compliance with the terms of this Guaranty, any such right being hereby expressly waived and relinquished. For so long as the Guaranteed Obligations remain unperformed, Guarantor waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Developer or another guarantor arising from a payment made by Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Developer or Guarantor for reimbursement. It is expressly understood that the waivers and agreements of Guarantor set forth above constitutes additional and cumulative benefits given to District for its security and as an inducement for it to enter into the LDA with Developer.

6. Financial Statements. Within fifteen (15) days after the Effective Date of this Guaranty, and within thirty (30) days after Guarantor's receipt of a request from District from time-to-time (but not more than one time per calendar year) until Final Completion of the Project, Guarantor shall deliver to District copies of updated, unaudited financial statements (certified by Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statement, other financial reports, and other financial information of Guarantor as District may reasonably request.

7. No Discharge of Obligations.

7.1 Except in the event of a written amendment to this Guaranty signed by the Guarantor and District and then only to the extent expressly provided therein, to the fullest extent permitted by law, none of Guarantor's obligations and no right against Guarantor shall be in any way discharged, impaired or otherwise affected by:

(a) The modification, amendment, or waiver, by change order, directive, or otherwise, or any extension of time for performance of, or other modification in or of the LDA or Construction and Use Covenant.

(b) The release or waiver of or delay in the enforcement of any right or remedy by District against Developer or any Guarantor under the LDA, Construction and Use Covenant, or this Guaranty, or the compromise or settlement by any of the above parties of any amount or matter in dispute relating to any of the forgoing agreements.

(c) The exercise by District, any mortgage lender, or any other party of any of their respective rights and remedies under the LDA, Construction and Use Covenant, or any mortgage loan documents, or any other agreement relating to the construction of the Improvements.

(d) The approval, disapproval, inspection, review, or failure to inspect or review by District of the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto, in connection with the construction of the Improvements.

(e) The release or discharge of Developer, any Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding.

(f) Any act or omission, whether negligent or otherwise, of District or its agents, employees, consultants, or any other Person acting for the benefit of District.

7.2 It is expressly agreed by Guarantor that, to the fullest extent permitted by law, none of the forgoing events shall release or discharge the obligations of Guarantor hereunder, whether or not such event may otherwise be deemed a legal or equitable discharge of a guarantor or surety. Guarantor agrees that neither District nor any other party shall have any duty to disclose to Guarantor any information they receive regarding the financial status of any party involved in the development or construction of the Improvements, or any information relating to the Property, whether such information indicates that the risk or obligations of Guarantor have or may increase. Guarantor assumes full responsibility for keeping informed of such matters.

7.3 No change in the composition of District, Developer or any other Person shall in any way affect, impair, or diminish the liability of Guarantor hereunder, and District shall have no obligation to inquire into the powers of any of them to perform the Guaranteed Obligations.

7.4 This Guaranty is being delivered free of any conditions and no representations have been made to Guarantor affecting or limiting the liability of Guarantor hereunder. The obligations of Guarantor hereunder are independent of any obligations which Guarantor may have to District, directly or indirectly.

8. Nature of Guaranty. This Guaranty is absolute, irrevocable, and continuing in nature and relates to Guaranteed Obligations now existing or hereafter arising. This Guaranty is a guaranty of prompt and punctual performance and is not a guaranty of collection. The liability of Guarantor hereunder is independent of the obligations of Developer or any other Person, and a separate action or separate actions may be brought or prosecuted against the Guarantor whether

or not any action is brought or prosecuted against Developer, another guarantor, or any other Person, or whether Developer, the another guarantor, or any other Person is joined in any such action or actions. The liability of Guarantor hereunder is independent of, and not in consideration of or contingent upon the liability of any other Person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor unless Guarantor is independently and specifically released in writing by District. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance (and not of collection) without regard to:

(a) the legality, validity, or enforceability of any of the LDA, Construction and Use Covenant, or any of the obligations of Developer evidenced thereby;

(b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by Guarantor under this Guaranty); or

(c) any other circumstances whatsoever (with or without notice to or knowledge of Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

9. Relationship to Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument, or agreement executed by Guarantor in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto. In no event will Guarantor's liability hereunder be reduced as a result of any evidence that the cost to perform the Guaranteed Obligations exceeds the enhancement in value to the Property resulting from performance of the Guaranteed Obligations.

10. Subordination of Indebtedness and Obligations. Guarantor agrees that any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) or other obligations or liabilities owed to Guarantor by any other guarantor or Developer shall at all times be subordinate in all respects to the full and prior indefeasible performance of all obligations owed to District under the LDA and Article II of the Construction and Use Covenant. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all such obligations owed to District have been paid and performed in full.

11. Statute of Limitations and Other Laws. To the fullest extent permitted by law, until the Guaranteed Obligations have been irrevocably paid and performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations. Guarantor expressly waives, to the fullest extent permitted by law, the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for

valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301 (2012 Supp.).

12. Rights Upon Default.

12.1 Upon the occurrence of (a) any failure in the performance of the Guaranteed Obligations beyond any applicable notice and cure period, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts as they mature, (d) an assignment by Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed within ninety (90) days of Guarantor's receipt of notice of filing, (f) the determination by the District in good faith that a Material Adverse Change has occurred in the financial condition of Guarantor, including without limitation, the entry of a significant judgment against Guarantor, the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor, (g) the falsity in any material respect of or any material omission in any representation made to District by Guarantor, or (h) any other default by Guarantor of any other obligations owed to District under the terms hereof, District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for District to marshal assets in favor of Developer, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty.

12.2 Guarantor agrees that, if District determines that a default has occurred hereunder beyond any applicable notice and cure periods, District may (in addition to all of its other rights and remedies) without the consent of or notice to Guarantor (a) complete or engage one or more third parties to complete construction of the Project, (b) terminate any and all contracts and agreements entered into by Guarantor in connection with construction of the Project, (c) engage builders, contractors, engineers, architects, and others for the purpose of furnishing labor, materials, and equipment in connection with the construction of the Project, (d) pay, compromise, or settle all bills or claims incurred in connection with Final Completion, (e) take such actions including procuring another developer or developers of the Project, or (f) take or refrain from taking such other action to enforce the provisions of this Guaranty as it may from time to time determine in its sole discretion. Guarantor shall, immediately upon demand therefor, reimburse District for any and all reasonable expenditures incurred by District under this Section plus interest thereon at a rate of fifteen percent (15%) per annum from the date that is thirty (30) days after demand for payment accompanied by reasonable backup documentation until all sums are paid to District. Upon the occurrence of any of (a) through (e) in the first sentence of subsection 12.1, District may file a separate action or actions against one or more Guarantors, whether action is brought or prosecuted with respect to any security or against any other Person, or whether any other Person is joined in any such action or actions.

12.3 Guarantor agrees that District and Developer or the other Person may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer of any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer or the other Person or any Person, shall have any personal liability with respect thereto.

12.4 Guarantor expressly waives, to the fullest extent permitted by law, any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Developer or any other Person with respect to the Guaranteed Obligations (other than full performance of the Guaranteed Obligations to the satisfaction of District); (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations; (c) the cessation for any cause whatsoever of the liability, in whole or in part, of Developer or any other Person (other than by reason of the timely and full performance of all Guaranteed Obligations); (d) any failure of District to marshal assets in favor of Developer or any other Person; (e) any failure of District to give notice of sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral; (f) any failure of District to comply with applicable Laws or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District, including any failure of District to conduct a commercially reasonable sale or other disposition of any collateral or other security for any obligation owed to District; (g) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations); (h) any applicable Law or other requirement which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal; (i) any failure of District to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (j) the election by District in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person; (l) the avoidance of any lien in favor of District for any reason; (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, or dissolution proceeding commenced by or against any Person, including any discharge of, or bar, or stay against

enforcing all or any of the Guaranteed Obligations (or any interest thereon) in or as a result of any such proceedings; (n) all rights or defenses Guarantor may have by reason of protection afforded to the principal with respect to the Guaranteed Obligations or to any other guarantor's obligations under its guaranty, in either case, pursuant to the anti-deficiency laws or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and (o) the right to require District to proceed under any other remedy District may have before proceeding against Guarantor. Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional obligations by Developer for which Guarantor shall be automatically responsible and liable hereunder and waives all surety and guarantor defenses, all to the fullest extent permitted by law, and thus, Guarantor acknowledges that it may essentially have no control over its ultimate responsibility for Developer's obligations guaranteed hereunder.

13. Cumulative Rights. The exercise by District of any right or remedy hereunder or under the LDA, Construction and Use Covenant, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the LDA, Construction and Use Covenant, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances.

14. Waivers and Consents.

14.1 Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for performance or the terms of the LDA or Construction and Use Covenant; (b) supplement, modify, amend, or waive, or enter into or give any agreement, approval, or consent

with respect to, the LDA, Construction and Use Covenant, or any part thereof, or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder; (c) accept new or additional instruments, documents, or agreements in exchange for or relative to the LDA, Construction and Use Covenant, or any part thereof or performance pursuant thereto; (d) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (e) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (f) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (g) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (h) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (i) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (j) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

14.2 Guarantor expressly agrees that until the Guaranteed Obligations are performed in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not, to the fullest extent permitted by law, be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay, or other act or omission of District, or District's failure to proceed promptly or otherwise as against Developer or any other Person, or any security;

(c) Any action, omission, or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Developer or any other Person; or

(d) Any dealings occurring at any time between Developer or any other Person, on the one hand, and District, on the other hand, whether relating to the LDA, Construction and Use Covenant, or otherwise.

(e) Guarantor waives all rights and defenses arising out of an election of remedies by District, even though that election of remedies may have destroyed Guarantor's rights of subrogation and reimbursement against Developer or any other Person, and even though that

election of remedies by District has destroyed Guarantor's rights of contribution against another guarantor of any of the Guaranteed Obligations.

14.3 No provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in Sections 12 and 14.

14.4 Guarantor hereby expressly, to the fullest extent permitted by law, waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers, or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances.

15. No Amendment. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by District and the Guarantor to be bound by such agreement.

16. Successors. This Guaranty shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors and assigns of the parties hereto.

17. Irrevocable Survival. This Guaranty shall be irrevocable by the Guarantor until all Guaranteed Obligations have been completely and indefeasibly paid and all obligations and undertakings of Developer and of the undersigned hereunder have been completely performed.

18. Unenforceability. If any term or provision of this Guaranty shall be determined to be illegal, invalid, or unenforceable, this Guaranty and all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

19. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the Construction and Use Covenant.

20. Entire Agreement. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, commitments, representations, agreements, and understandings between the parties.

21. WAIVER OF JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY, THE LDA, CONSTRUCTION AND USE COVENANT, OR TO THE TRANSACTIONS CONTEMPLATED BY THE AFOREMENTIONED. ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA OR THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, AND GUARANTOR AGREES THAT SUCH COURTS ARE THE MOST CONVENIENT FORUM FOR RESOLUTION OF ANY SUCH ACTION AND FURTHER AGREES TO SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY RIGHT TO OBJECT TO VENUE IN SUCH COURTS.

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22. Notice. Any notice which may or is required to be given hereunder shall be deemed given three days after being deposited, registered or certified, return receipt requested, in the United States mail, addressed to the recipient at the address set forth after recipient's name below, or at such different addresses as it shall have theretofore given written notice of hereunder:

GUARANTOR:

with a copy to: Holland & Knight LLP
800 17th Street, N.W., Suite 1100
Washington, DC 20006
Attention: Robert N. Boyd, Esq.

DISTRICT: Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Ave., N.W., Suite 317
Washington, DC 20001
Attention: Deputy Mayor for Planning and Economic Development

with a copy to: Office of the Attorney General for the District of Columbia
441 4th Street, NW, Suite 1010 South
Washington, DC 20001
Attention: Deputy of Commercial Division

23. Counterparts. This Guaranty may be executed in counterparts, each of which shall be deemed to be an original. In proving this Guaranty it shall not be necessary to produce or account for more than one counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF Guarantor has executed this Guaranty as of the day and year first above written.

By:_____
Name:_____
Title:_____

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (the "**Covenant**") is made as of the _____ day of _____, 2013 ("**Effective Date**"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**") and (ii) 1300 H STREET NE LLC, a District of Columbia limited liability company, and its successors and assigns (the "**Owner**").

RECITALS

R-1. District owns the improved real property located at 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Lots 97, 98, 99, 100, 101, 102, and 103 in Square 1026, as further described on Exhibit A (the "**Property**").

R-2. District and Owner entered into a Land Disposition Agreement, effective _____, 2013 (the "**Agreement**"), pursuant to which District agreed to sell the Property to Owner subject to certain terms and conditions that survive such sale, some of which are set forth herein as covenants that will run with the land.

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents.

R-4. As required by the Agreement, Owner, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the parties, pursuant to the terms and conditions set forth below.

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

ARTICLE I
DEFINITIONS AND MISCELLANEOUS PROVISIONS

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

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

"**Affordability Covenant**" is that certain Affordable Housing Covenant between District and Owner dated as of the date hereof and recorded in the Land Records.

"**Affordable Unit**" means each unit to be developed, leased or sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

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

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

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

"Architect" means Stoiber + Associates, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Owner for the Project and reasonably approved by District.

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

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

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

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

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

"Commencement of Construction" means 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 Permits (through building permit) and commenced work on the Project pursuant to the Approved Plans and Specifications. For purposes of this Covenant, 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 Improvements 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, in accordance with the Approved Plans and Specifications and this Covenant; (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; (iii) Owner has provided District with a copy of the Certificate of Completion; and (iv) a permanent Certificate of Occupancy has been issued for the Project.

"**Construction Consultant**" is defined in Section 2.1.2.

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

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

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

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

"**Debt Financing**" shall mean the financing to be obtained by Owner from an Institutional Lender to fund all or, at Owner's election, part of the costs set forth in the Final Project Budget (including, without limitation, costs of issuance relating to any bond financings issued by the District of Columbia or other governmental agency), and shall expressly exclude Mezzanine Loans and the Equity Investment.

"Deed" means the special warranty deed dated the date hereof conveying the Property to Owner recorded in the Land Records.

"Development and Completion Guaranty" is that guaranty dated _____ and executed by the Guarantors, which binds the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Covenant.

"Development Plan" means Owner's detailed plans for developing and constructing the Project as a five (5) level (or, at Owner's sole election, four (4) level) mixed-use residential and retail development, containing approximately 8,000 square feet of retail, approximately eight (8) parking spaces (provided, however, that Owner may elect, in its sole discretion, to have more than eight (8) parking spaces), a memorialization honoring RL Christian, and approximately 30 residential units or, at Owner's election up to approximately 45 residential units, of which, in either event, no less than three (3) such residential units shall be affordable to households earning up to fifty percent (50%) of Area Median Income ("AMI") and no less than three (3) such

residential units shall be affordable to households earning up to eighty percent (80%) of AMI, unless otherwise modified by Owner with the prior approval of District in its sole discretion.

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

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

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

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

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

"Environmental Laws" means any present or future federal or District law, statute, common law, rule, order, regulation, permit or other requirement or guideline having the force and effect of law of a federal or District governmental authority and relating to (a) the protection of human health, safety, and the environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) the release of a Hazardous Material into, onto, or about the air, land, surface water, or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding provided by any Person or Members with a direct or indirect ownership interest in Owner that is required for the development and construction of the Project exclusive of any Mezzanine Loans and Debt Financing. Equity Investment may be made in the form of deferred development fees in an amount not to exceed the amount shown in the approved Project Funding Plan and Final Project Budget.

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

"Final Completion" means following Completion of Construction (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the

payment of all costs of constructing the Project and receipt by Owner of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (iv) the receipt by District of a certification by Owner of the items in clauses (i) through (iii) of this definition.

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

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

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

"**Guarantors**" shall mean _____ and any successor(s) approved by District pursuant to Section 2.10.1

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

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

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

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

"**Indemnified Parties**" is defined in Section 3.3.1.

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

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

"LEED" shall mean Leadership in Energy and Environmental Design.

"Material Change" means (i) any change in size or design from the Approved Plans and Specifications substantially affecting the general appearance or structural integrity, exterior

walls and elevations, a change in the number of levels (provided, however, that a decrease in the number of levels from five (5) levels to four (4) levels shall not be deemed a Material Change and shall not require the District's consent), or a five percent (5%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications; (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications (provided, however, that any increase in the number of parking spaces up to seventeen (17) parking spaces shall not be deemed a Material Change and shall not require the District's consent); and (v) in the case of Affordable Units only, as compared against the Approved Plans and Specifications, any change of location within the Project of one (1) or more Affordable Units, any decrease in the number of Affordable Units below six (6) Affordable Units, any decrease in the rentable area of any Affordable Unit by more than twenty percent (20%), or any change in the level of interior finish of an Affordable Unit.

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

"**Mezzanine Loan**" means a loan to Owner, one or more of Owner's Members or partners or any Affiliate of Owner which is: (a) for the purpose of financing a portion of the acquisition and development of the Property or construction of the Project, (b) secured by the stock of Owner, one or more of Owner's members or partners or any Affiliate of Owner, (c) subordinated to the Debt Financing pursuant to an intercreditor agreement between the lender of the Mezzanine Loan and the lender of the Debt Financing, and (d) is not an Equity Investment, as defined herein, or similar financing provided in consideration of a direct or indirect ownership interest in Owner or the Project.

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

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

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

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

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

"**Owner's Agents**" mean the Owner's employees, consultants, contractors, subcontractors and representatives.

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

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

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

"**Permitted Transfer**" means (a) any direct or indirect sale or transfer by Owner of all of, a majority of, or a fifty percent interest in, or a controlling interest in, Owner to any Affiliate of Owner, provided Owner provides the District evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that such sale or transfer is to an entity that is an Affiliate of Owner, (b) the creation of one or more joint ventures, limited liability companies or other entities under the Control of Owner or its Affiliate, created for the purpose of holding fee title to all or a portion of the Project in which the partners, members or other owners comprise, directly or indirectly, Owner or its Affiliate and the party or parties making additional equity contributions, and in which Owner or its Affiliates serves as general partner, managing member or equivalent, and such direct or indirect sales or transfers required to effectuate same, or (c) any direct or indirect sale or transfer of a non-Controlling interest in Owner. In the case of subsection (a), (b), or (c) above, any such Permitted Transfer shall not be effective unless and until Owner provides the District (i) at least ten (10) Business Days' prior written notice of any such Permitted Transfer, (ii) evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that, after any such Permitted Transfer, Owner or an Owner Affiliate shall remain in Control of any joint venture transferee entity and the management and construction of the Project, and (iii) evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are not Prohibited Persons.

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

"**Prohibited Person**" shall mean any of the following Persons: (a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date

hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (e) Any Person suspended or debarred by HUD or by the District of Columbia government; or (f) Any Affiliate of any of the Persons described in paragraphs (a) through (e) above.

"**Prohibited Uses**" shall have the meaning set forth in Section 3.1.1.

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

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

"Property" is defined in the Recitals.

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

"**Reconveyance Date**" is defined in Section 5.2.1(f).

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

"RL Christian Memorial" shall mean a memorial honoring Robert Lee Christian built in accordance with the Approved Plans and Specifications.

"Schedule of Performance" means that schedule of performance setting forth the timelines for milestones in the remediation of the Property and the design, development,

construction, and completion of the Project (including a construction timeline in customary form), attached as Exhibit B hereto.

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

"**Transfer**" means any sale, assignment, conveyance, lease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of the Property or Improvements now or hereafter constructed on the Property, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same, except for a Permitted Transfer. As used in this Covenant, a Transfer shall also be deemed to have occurred if: (i) there is a change in Control of Owner or the managing member of Owner from that existing as of the Effective Date or (ii) the equity or development participation requirements contained in the CBE Agreement are no longer satisfied.

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

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

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

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

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

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

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

ARTICLE II
CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT

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

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

2.2 PRE-CONSTRUCTION ITEMS

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

2.2.2 **Site Preparation**. Owner, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including, costs associated with the construction of the Project, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all

required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS

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

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

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

2.3.4 **Final Completion**. Subject to Force Majeure and Municipal Delay, Owner shall achieve Final Completion on or before the Outside Completion Date indicated in the Schedule of Performance. Promptly after Owner achieves Final Completion, Owner shall notify District and certify, under oath, that all Punch List Items have been completed, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Owner has received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project. Following District's inspection of the Project in accordance with Sections 3.1 and 3.2, provided District accepts Final Completion of the Project, District shall deliver to Owner a certificate ("**Certificate of Final Completion**") in recordable form confirming Owner's Final Completion of the Project.

2.4 MATERIAL CHANGES TO APPROVED PLANS AND SPECIFICATIONS

2.4.1 **Material Change**. Owner shall not make or cause to be made any Material Changes to the Approved Plans and Specifications without District's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Owner desires to make a Material Change to the Approved Plans and Specifications, Owner shall submit the proposed Material Change to District for approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) Business Days. Failure to

respond within five (5) business days after a Second Notice shall be considered a deemed approval, provided the Material Change is consistent with the Concept Plans and Development Plan. Any approved or deemed approved Material Change shall become part of the Approved Plans and Specifications.

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

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

2.5 LABOR/EMPLOYMENT COVENANTS.

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

(a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Owner's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the

Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

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

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

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

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

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

(a) **Inspection of Site**. Upon at least five (5) Business Days prior written notice to Owner, District shall have the right to enter the Property from time to time and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Owner in a manner that will minimize any interference with construction of the Project. Owner understands that, provided that District shall minimize any interference with construction of the Project, District or its representatives will enter the Property from time to time upon the required notice set forth above for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications and this Covenant, as applicable, and Owner shall have the right to accompany those persons during such inspections. Owner waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project

or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

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

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

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

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

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

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

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

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

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

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

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

2.9.4 **Mortgage Agreement**. Any Mortgagee or holder of a Mezzanine Loan may request that District enter into an agreement with such Mortgagee or holder providing such Mortgagee or holder with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee or holder, and consent for such request shall not be unreasonable withheld, conditioned or delayed by District provided that

(i) there exists no Event of Default by Owner at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in the Agreement, this Covenant, the Affordability Covenant, the Development and Completion Guaranty, or any other agreements related to this transaction and (iii) the terms of any requested agreement do not obligate the District to make any payments or take any action in violation of Applicable Law.

2.10 DISTRICT SECURITY FOR PERFORMANCE

2.10.1 **Development and Completion Guaranty**.

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

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

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

ARTICLE III
USE COVENANTS

3.1 PROHIBITED USES AND MAINTENANCE OF RL CHRISTIAN MEMORIAL

3.1.1 **Prohibited Uses**. The Property shall be used for any uses permitted by Applicable Law and the Development Plan; except that no portion of the Property (expressly excluding, for purposes of clarification, the property located at 1306 and 1308 H Street, NE, Washington, DC (the "**Adjacent Property**") in the event the Property and the Adjacent Property are combined into one (1) new record lot) shall be used, in whole or in part, for any of the following

"**Prohibited Uses**": laundromat (but the foregoing shall not prohibit coin operated washing machines and dryers for the use of residents), check-cashing establishment, adult entertainment, and drive thru services.

3.1.2 **Maintenance of RL Christian Memorial.** The Owner shall maintain the RL Christian Memorial. In the event that the Project is subdivided and a portion thereof is transferred, the Person who owns the commercial space of the Project (i.e., the ground floor retail of the Project) shall maintain the RL Christian Memorial.

3.2 NONDISCRIMINATION COVENANTS

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

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

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

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

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

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

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

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

ARTICLE IV
TERM; RELEASE; SUBORDINATION OF LIENS AND MORTGAGES

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District is required to deliver to Owner the Certificate of Final Completion, at which time the Construction Covenants shall be deemed to be released and of no further force and effect. At such time, upon Owner's request to the District,

Owner shall prepare and be entitled to, and District shall execute, a Release of such Construction Covenants to be recorded among the Land Records against the Property.

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

4.3 RELEASE. At the request of either party to this Covenant and provided that there is no dispute 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.

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

ARTICLE V
DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT.

5.1.1 Each of the following shall constitute an "**Event of Default**" on the part of 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 perform a milestone by the applicable Outside Completion Date set forth in the Schedule of Performance, subject to Force Majeure and Municipal Delay; or

(c) 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

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.

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

5.2 REMEDIES.

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

(a) District may cure 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;

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

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

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

(e) District may require performance under the Performance Bond or Payment Bond; and,

(f) for Events of Default occurring prior to Commencement of Construction, District may exercise its reconveyance right contained in the Deed, provided such Event of Default has not been cured by the Reconveyance Date (as defined in the Deed).

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

ARTICLE VI
INSURANCE OBLIGATIONS

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

(a) Property Insurance - After achieving Completion of Construction, Owner shall maintain or ensure maintenance of property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance (excluding foundations, footings and excavation costs), less a commercially-reasonable deductible if Owner so chooses. Notwithstanding the foregoing, nothing herein shall release Owner from its obligations, under Section 7.2 herein.

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

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

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

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

of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical, and mechanical engineers with a deductible acceptable to District.

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

ARTICLE VII
CASUALTY

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

7.2 AFTER ISSUANCE OF THE CERTIFICATE OF COMPLETION. In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, Owner shall promptly cause the Property to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within twenty (20) Business Days after a request for approval).

ARTICLE VIII
INDEMNIFICATION

Owner shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of

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

ARTICLE IX
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

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

ARTICLE X
AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency, and by 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 XI
NOTICES

11.1 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
441 4th Street, N.W., Suite 1010 South
Washington, D.C. 20001

Attn: Deputy Attorney General, Commercial Division

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

OWNER:

Westmill Capital Partners LLC
1519 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
Attn: Mr. Benjamin Miller

With a copy to:

Holland & Knight LLP
800 17th Street, NW
Suite 1100
Washington, D.C. 20006
Attn: Robert N. Boyd, Esq.

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

ARTICLE XII
TRANSFER

12.1 **Transfer Prior to Final Completion.** Owner represents, warrants, covenants and agrees, for itself and its successors and assigns, that, prior to District's issuance of a Certificate of Final Completion, Owner shall not make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Owner shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request. Notwithstanding any contrary provision contained in this Agreement, upon Completion of Construction of the core and shell of the retail portion of the Improvements, Developer may Transfer the retail portion of the Property without the prior approval of District; provided, however, that any such Transfer shall not be effective unless and until Developer provides to District written notice of its intent to Transfer, which notice shall include the identity of the proposed transferee, evidence reasonably acceptable to the

District that any transferee entity and all members of such transferee entity are in good standing in the District of Columbia and not Prohibited Persons, and such other documentation or information that District may reasonably request. Notwithstanding any contrary provision contained in this Covenant, Permitted Transfers shall be permitted without District's prior written approval prior to District's issuance of a Certificate of Final Completion.

12.2 **Transfer After Final Completion**. Following Final Completion, Owner may Transfer the Property or the Improvements, including, without limitation, Permitted Transfers, without the District's prior approval, provided such Transfer is not to a Prohibited Person.

12.3 **Obligations and Liabilities**. The obligations and liabilities of an Owner under this Covenant shall apply only with respect to the period that such Owner owns fee simple title to all or a portion of the Property. Upon conveyance by such Owner 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 assignee in ownership or interest of any such Owner shall automatically become "Owner" hereunder and liable for all obligations arising after the date of the conveyance.

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

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

[Signatures on following page]

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

DISTRICT:

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

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

Approved for Legal Sufficiency:

Office of the Attorney General

By:_____
Assistant Attorney General

OWNER:

1300 H STREET NE LLC,
a District of Columbia limited liability company

By:_____
Name:_____
Title:_____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by Victor L. Hoskins, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

Notary Public

[Notarial Seal]

My commission expires:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by _____, the _____ of_____ _____, 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: _____

EXHIBIT A

Legal Description

[See attached]

EXHIBIT B

Schedule of Performance

EXHIBIT C

Final Project Budget

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("**Deed**") is made as of the ___ day of _____, 201_, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation ("**Grantor**"), acting by and through the Office of the Deputy Mayor for Planning and Economic Development and 1300 H STREET NE LLC, a District of Columbia limited liability company (the "**Grantee**").

WITNESSETH, that in consideration of the sum of Two Million Seven Hundred Fifty Four Thousand Dollars ($2,754,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee and its successors and assigns, in fee simple, all of the right, title and interest of Grantor in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, and together with any right, title and interest of Grantor in and to adjacent streets, alleys, rights-of-way, strips or gores, situate, lying and being in the District of Columbia, described as follows, to wit:

That certain real property located at 1300 H Street, N.E., in Washington, D.C., known for tax and assessment purposes as Square 1026, Lots 97, 98, 99, 100, 101, 102 and 103 (collectively, the "Property")

TO HAVE AND TO HOLD the same unto and for the use of the Grantee, its successors and assigns, in fee simple, forever;

SUBJECT to the provisions of that certain Construction and Use Covenant ("**Construction Covenant**") and that certain Affordable Housing Covenant, by and between Grantor and Grantee dated and recorded against the Property as of the date hereof;

AND SUBJECT FURTHER to the provisions of Grantor's Right to Reconveyance contained in Exhibit A, which is attached and incorporated herein;

AND Grantor covenants that it has the right to convey said Property to Grantee, that it will warrant specially said Property, and that it will execute such further assurances of said Property as may be requisite.

[*Signature page follow(s)*]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the date first set forth above.

GRANTOR:

WITNESS:

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

_____

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

DISTRICT OF COLUMBIA)
) ss:

I, _____, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Victor L. Hoskins, the Deputy Mayor for Planning and Economic Development, who is personally well known to me or satisfactorily proven to me to be the person who executed the foregoing and annexed Special Warranty Deed bearing date as of the __ of _____, 201_, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this _____ day of_____, 201_.

_____
Notary Public

My Commission Expires: _____

After recording, please return to:

EXHIBIT A
GRANTOR'S RIGHT TO RECONVEYANCE

Any capitalized term not defined herein shall have the meaning ascribed to it in the Construction Covenant. Subject to the notice, cure and other rights under the Construction Covenant, if an Event of Default occurs prior to Commencement of Construction thereunder, unless such Event of Default is cured prior to the Reconveyance Date described below, Grantor shall have the exclusive right to declare a termination in favor of Grantor of the title and of all the rights and interests in and to the Property, or any portion thereof, and to cause a reconveyance of the Property ("**Reconveyance Right**"), at Grantor's option, upon the following terms and conditions:

(A) Following the Event of Default, Grantor may give written notice to Grantee that Grantor has elected to exercise its Reconveyance Right ("**Exercise Notice**"). Reconveyance shall take place unless the Event of Default has been cured, by a date designated by Grantor (the "**Reconveyance Date**"). Grantor shall clearly state the Reconveyance Date in the Exercise Notice.

(B) On the Reconveyance Date, and as a condition to Grantor's exercise of its Reconveyance Right, Grantor shall deposit with a national title insurance company the sum of two million seven hundred and fifty-four thousand dollars ($2,754,000) (the "**Reconveyance Consideration**"), which amount equals the purchase price paid by Grantee for the Property pursuant to that certain Land Disposition Agreement dated as of _____, 201__ (the "**Land Disposition Agreement**"). Within five (5) Business Days after Grantor's deposit of the Reconveyance Consideration, Grantee shall deliver a special warranty deed ("**Reconveyance Deed**") conveying the Property, free and clear of (a) all liens and other monetary encumbrances and (b) all encumbrances that have not been approved by District pursuant to Section 12.1 of the Construction Covenant, to Grantor and shall deliver possession of the Property to Grantor, whereupon the Reconveyance Consideration shall be promptly paid to Grantee. Grantee shall deliver such documents as Grantor's title insurance company reasonably requires to evidence such reconveyance, and the affidavits, indemnities and other agreements reasonably required by Grantor's title insurance company in connection with insuring title to the Property.

(C) The exercise of the Reconveyance Right and the reconveyance thereunder shall terminate all obligations and/or covenants of Grantee in the Land Disposition Agreement, the Construction Covenant, and the Affordable Housing Covenant, except that Grantee shall continue to be bound by those provisions that expressly survive termination.

(D) The reconveyance of the Property shall be effective upon recordation of the Reconveyance Deed among the land records of the District of Columbia.

(E) Any notice to be delivered pursuant to this Deed shall be delivered in accordance with the notice provisions set forth in the Construction Covenant.

(F) Upon Commencement of Construction (as defined in the Construction Covenant), the Grantor's Reconveyance Right and this Exhibit A shall expire and be deemed automatically released.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

September 11, 2013

Reyna Alorro
Project Manager
Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004

Dear Ms. Alorro:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and 1300 H Street, NE, LLC. Please note that the enclosed First Source Agreement reflects legislative changes to the First Source Program which took effect on February 24, 2012. Under the terms of the Agreement, you are required to use DOES as the first source to fill all new jobs created as a result of Project: RL Christian Arts Campus. The new provisions still require that 51% of all new hires be District residents on government contracts between $300,000 and $5 million. In addition, each construction project receiving government assistance totaling $5 million or more is required to have the following percentage of hours worked by DC residents on those projects; 20% of journey worker hours; 60% of apprentice hours; 51% of skilled laborer hours; 70% of common laborer hours. Further, District residents registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project or 60% where applicable.

You should post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.dcnetworks.org. Please contact DeCarlo Washington at (202) 698-5772 to receive assistance with identifying qualified District residents for placement.

The First Source Program has implemented an electronic compliance database which will provide a more efficient way for employers to enter and track their monthly First Source data. If you have any questions regarding the Monthly Compliance Reporting Database, please contact DeCarlo Washington at (202) 698-5772.

Sincerely,

Drew Hubbard
Associate Director
First Source Program

Enclosure

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRST SOURCE EMPLOYMENT AGREEMENT FOR CONSTRUCTION PROJECTS ONLY

GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

CONTRACT/SOLICITATION NUMBER: _____
DISTRICT CONTRACTING AGENCY: Deputy Mayor for Planning & Economic Development
CONTRACTING OFFICER: Ms. Reyna Alorro
TELEPHONE NUMBER: 202-727-6365
TOTAL CONTRACT AMOUNT: $2.7 million
EMPLOYER CONTRACT AMOUNT: $2.7 million
PROJECT NAME: RL Christian Arts Campus
PROJECT ADDRESS: 1300 H Street NE
CITY: Washington STATE: DC ZIP CODE: 20002
PROJECT START DATE: TBD PROJECT END DATE: TBD
EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD

EMPLOYER INFORMATION

EMPLOYER NAME: 1300 H Street NE LLC
EMPLOYER ADDRESS: 1519 Connecticut Avenue NW, Suite 200
CITY: Washington STATE: DC ZIP CODE: 20036
TELEPHONE NUMBER: 202-584-0060 FEDERAL IDENTIFICATION NO.: 46-3360593
CONTACT PERSON: Benjamin Miller
TITLE: Manager
E-MAIL: bmiller@westmillcapital.com TELEPHONE NUMBER: 202-584-0060
LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION NUMBER: LSZR321700920
D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: _____
ARE YOU A SUBCONTRACTOR ☐ YES ☑ NO IF YES, NAME OF PRIME CONTRACTOR: TBD

This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, (DOES) and EMPLOYER. Pursuant to this Agreement, the EMPLOYER shall use DOES as its first source for recruitment, referral, and placement of new hires or employees for all jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all jobs created by the Project as outlined below in Section VII. The EMPLOYER shall ensure that District of Columbia residents (DC residents) registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% (or 60% where applicable) of all apprenticeship hours worked in connection with the Project.

I. DEFINITIONS

The following definitions shall govern the terms used in this Agreement.

A. **Apprentice** means a worker who is employed to learn an apprenticeable occupation under the terms and conditions of approved apprenticeship standards.

B. **Beneficiary** means:

1. The signatory to a contract executed by the Mayor which involves any District of

Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of $300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for $1 million or more of District of Columbia funds.

3. A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of $300,000.

C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted project or contract totaling $300,000 or more.

D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.

E. **EMPLOYER** means any entity awarded a government assisted project or contract totaling $300,000 or more.

F. **First Source Employer Portal** means the website consisting of a connected group of static and dynamic (functional) pages and forms on the World Wide Web accessible by Uniform Resource Locator (URL) and maintained by DOES to provide information and reporting functionality to EMPLOYERS.

G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.

H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.

I. **Government-assisted project or contract** (Project) means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at $300,000 or more.

J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:

1. An ex-offender who has been released from prison within the last 10 years;

2. A participant of the Temporary Assistance for Needy Families program;

3. A participant of the Supplemental Nutrition Assistance Program;

4. Living with a permanent disability verified by the Social Security Administration or

District vocational rehabilitation program;

5. Unemployed for 6 months or more in the last 12-month period;

6. Homeless;

7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or

8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

K. **Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

L. **Jobs** means any union and non-union managerial, nonmanagerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

M. **Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

N. **Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:

1. A projection of the total number of hours to be worked on the project or contract by trade;

2. A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by DC residents;

3. A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by DC residents;

4. A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by DC residents;

5. A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by DC residents;

6. A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;

7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;

9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;

10. The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;

11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the project or contract;

12. A strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ DC residents from one project or contract to the next;

13. A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and

14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.

O. **Tier Subcontractor** means any contractor selected by the primary subcontractor to perform portion(s) or all work related to the trade or occupation area(s) on a contract or project subject to this First Source Agreement.

P. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.

Q. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.

II. GENERAL TERMS

A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date, whichever is later. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.

B. The EMPLOYER will require all Project contractors and Project subcontractors with contracts or subcontracts totaling $300,000 or more to enter into an Agreement with DOES.

C. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.

D. This Agreement will take effect when signed by the parties below and will be fully effective through the duration, any extension or modification of the Project and until such time as construction is complete and a certificate of occupancy is issued.

E. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.

F. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401- 1431.

G. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

H. The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least $500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.

I. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:

    1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.

    2. Notify DOES within 7 business days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.

J. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.

K. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

III. TRAINING

A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate

Training Agreement.

IV. RECRUITMENT

A. The EMPLOYER will complete the attached Revised Employment Plan that will include the information outlined in Section I.N., above.

B. The EMPLOYER will post all job vacancies with the Job Bank Services of DOES at http://does.dc.gov within 7 days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.

C. The EMPLOYER will notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYERS' identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.

D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.

E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

V. REFERRAL

A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice set forth above in Section IV.C.

B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

VI. PLACEMENT

A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.

B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. The EMPLOYER will still be required to meet the hiring or hours worked percentages for all jobs created by the Project.

C. After the EMPLOYER has selected its employees, DOES is not responsible for the

employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

VII. REPORTING REQUIREMENTS

A. EMPLOYER is given the choice to report hiring or hours worked percentages either by Prime Contractor for the entire Project or per each Sub-contractor.

B. EMPLOYER with Projects valued at a minimum of $300,000 shall hire DC residents for at least 51% of all new jobs created by the Project.

C. EMPLOYER with Projects totaling $5 million or more shall meet the following hours worked percentages for **all** jobs created by the Project:

1. At least 20% of journey worker hours by trade shall be performed by DC residents;
2. At least 60% of apprentice hours by trade shall be performed by DC residents;
3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
4. At least 70% of common laborer hours shall be performed by DC residents.

D. EMPLOYER shall have a user name and password for the First Source Employer Portal for electronic submission of all monthly Contract Compliance Forms, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.

E. EMPLOYER with Projects valued at a minimum of $300,000 shall provide the following monthly and cumulative statistics on the Contract Compliance Form:

1. Number of new job openings created/available;
2. Number of new job openings listed with DOES, or any other District Agency;
3. Number of DC residents hired for new jobs;
4. Number of employees transferred to the Project;
5. Number of DC residents transferred to the Project;
6. Direct or indirect labor cost associated with the project;
7. Each employee's name, job title, social security number, hire date, residence, and referral source; and
8. Workforce statistics throughout the entire project tenure.

F. In addition to the reporting requirements outlined in E, EMPLOYER with Projects totaling $5 million or more shall provide the following monthly and cumulative statistics on the Contract Compliance Form:

1. Number of journey worker hours worked by DC residents by trade;
2. Number of hours worked by all journey workers by trade;
3. Number of apprentice hours worked by DC residents by trade;
4. Number of hours worked by all apprentices by trade;
5. Number of skilled laborer worker hours worked by DC residents by trade;
6. Number of hours worked by all skilled laborers by trade;
7. Number of common laborer hours worked by DC residents by trade; and
8. Number of hours worked by all common laborers by trade.

G. EMPLOYER can "double count" hours for the "hard to employ" up to 15% of total hours worked by DC Residents.

H. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER must submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.

I. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.

J. Monthly, EMPLOYER must submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

VIII. FINAL REPORT AND GOOD FAITH EFFORTS

A. With the submission of the final request for payment from the Contracting Agency, the EMPLOYER shall:

1. Document in a report to DOES its compliance with the hiring or hours worked percentage requirements for all jobs created by the Project and the percentages of DC residents employed in all Trade Classifications, for each area of the Project; or

2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all jobs created by the Project that will include the following documentation:

   a. Documentation supporting EMPLOYER'S good faith effort to comply;
   b. Referrals provided by DOES and other referral sources; and
   c. Advertisement of job openings listed with DOES and other referral sources.

B. DOES may waive the hiring or hours worked percentage requirements for all jobs created by the Project, and/or the required percentages of DC residents in all Trade Classifications areas on the Project, if DOES finds that:

1. EMPLOYER demonstrated a good faith effort to comply, as set forth in Section C, below; or

2. EMPLOYER is located outside the Washington Metropolitan Statistical Area and none of the contract work is performed inside the Washington Metropolitan Statistical Area.

3. EMPLOYER entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or

4. DOES certified that there are insufficient numbers of DC residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.

C. DOES shall consider documentation of the following when making a determination of a good-faith effort to comply:

1. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;

2. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;

3. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;

4. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;

5. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;

6. Whether the EMPLOYER interviewed employable candidates;

7. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;

8. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;

9. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;

10. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and

11. Any additional documented efforts.

IX. MONITORING

A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2 219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.

B. EMPLOYER'S noncompliance with the provisions of this Agreement may result in the imposition of penalties.

C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

D. DOES shall monitor all Projects as authorized by law. DOES will:

1. Review all contract controls to determine if Prime Contractors and Subcontractors are subject to DC Law 14-24.

2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.

3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.

4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.

5. Conduct desk reviews of *Monthly Compliance Reports*.

6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.

7. Monitor and complete statistical reports that identify the overall project, contractor, and sub contractors' hiring or hours worked percentages.

8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. ***(Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)***

X. PENALTIES

A. Willful breach of the Agreement by the EMPLOYER, failure to submit the Contract Compliance Reports, deliberate submission of falsified data or failure to reach specific hiring or hours worked requirements may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER. Fines will also include additional prorated fines of 1/8 of 1% of total contract amount for not reaching specific hiring or hours worked requirements. Prime Contractors who choose to report all hiring or hours worked percentages cumulatively (overall construction project) will be penalized, if hiring or hours worked percentage requirements are not met.

B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.

C. Appeals of violations or fines are to be filed with the Contract Appeals Board.

I hereby certify that I have the authority to bind the EMPLOYER to this Agreement.

By:
Daniel Miller

EMPLOYER Senior Official
1300 H Street NE LLC

Name of Company
1519 Connecticut Avenue NW, Suite 200

Washington, DC 20036

Address
202-584-0060

Telephone
dmiller@westmillcapital.com

Email

September 4, 2013

Date

Associate Director for First Source
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
202-698-6284
firstsource@dc.gov

EMPLOYMENT PLAN

NAME OF EMPLOYER: 1300 H Street NE LLC

ADDRESS OF EMPLOYER: 1519 Connecticut Ave NW, Suite 200, Washington, DC 20036

TELEPHONE NUMBER: 202-584-0060 FEDERAL IDENTIFICATION NO.: 46-3360593

CONTACT PERSON: Max Kirschenbaum TITLE: Associate

E-MAIL: max@westmillcapital.com TYPE OF BUSINESS: Real Estate Development

DISTRICT CONTRACTING AGENCY: Office of the Deputy Mayor for Planning & Economic Development

CONTRACTING OFFICER: Ms. Reyna Alorro TELEPHONE NUMBER: 202-340-2957

TYPE OF PROJECT: Mixed-use Condo Redevelopment CONTRACT AMOUNT: $2.7 million

EMPLOYER CONTRACT AMOUNT: $2.7 million

PROJECT START DATE: TBD PROJECT END DATE: TBD

EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD

NEW JOB CREATION PROJECTIONS: Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	Project Manager	1 F/T	$100,000		TBD
B	TBD	TBD	TBD		TBD
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

NAME OF EMPLOYEE	CURRENT DISTRICT RESIDENT √Please Check	WARD	
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JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the Project.

CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT (this "Agreement") is made by and between the DISTRICT OF COLUMBIA (the "District"), a municipal corporation acting by and through the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT** ("DSLBD") and **1300 H STREET NE LLC,** a District of Columbia limited liability company, or its designees, successors or assigns (the "Developer").

RECITALS

A. Pursuant to a Land Disposition and Development Agreement to be entered between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development, Developer intends to provide for the development of a 5-story mixed-use condominium development with a ground-floor retail component to be located at 1300 H Street NE in Washington, District of Columbia (the "Project").

B. Pursuant to the Land Disposition and Development Agreement, the Developer covenants that it has executed and will comply in all respects with this Agreement.

C. Capitalized terms not defined herein shall have the meaning assigned to them in the Land Disposition and Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and the Developer agree, as follows:

ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the "Act") (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a "CBE") in connection with the predevelopment and development phases of the Project, including, but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the adjusted development budget ("Adjusted Development Budget" or "Adjusted Budget") detailed in Attachment 1 (the "CBE Minimum Expenditure"). The Adjusted Development Budget is **$7,225,898**. The CBE Minimum Expenditure is therefore **$2,529,064**.

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District ("Expenditure Period"). If within three (3) years of the execution of this Agreement the

Developer has not achieved the CBE Minimum Expenditure and has not obtained a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

Section 1.3 Adjustments to the Adjusted Development Budget. If the Total Development Budget increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget ("Adjustment"). The CBE Minimum Expenditure and Contingent Contributions (if applicable as defined herein) shall be automatically increased in the case of an increase in the Adjusted Development Budget or decreased in the case of a decrease in the Adjusted Development Budget, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall be provided to the Developer and ODCA.

Section 1.4 Capacity Building Incentives. Developer acknowledges that a priority of the District of Columbia is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises as defined in the Act (each a "DBE") in particular. Such incentives when earned by Developer will be applied by DSLBD to reduce Developer's CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) The Developer may devise a list of professional services, trade specialties, or other vocational areas in which CBEs either lack capacity, lack depth, or in which such firms traditionally do not participate as prime contractors in construction projects of this nature and size (each, a "Target Sector"), and submit the list to DSLBD for approval before or simultaneously with the execution of this Agreement. CBEs identified on the list shall not be eligible for a bonus, as described in paragraphs (1) and (2) below ("Reporting Bonus"), unless the list is approved by DSLBD. Any such list submitted and approved by DSLBD shall be attached hereto as Attachment 2 and made a part of this Agreement.

(1) For every dollar expended with a *DBE* for services that fall *within* a Target Sector, Developer shall receive credit for $1.50 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a DBE for services that fall within a Target Sector would be counted as $150,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(2) For every dollar expended with a *CBE* that is not a DBE for services that fall *within* a Target Sector, Developer shall receive credit for $1.25 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a CBE for services that fall within a Target Sector would be counted as $125,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(3) For every dollar expended with a *DBE* for services *not* included in a Target Sector, Developer shall receive a credit for $1.25 against the CBE

Minimum Expenditure. For example, a $100,000 contract award paid to a DBE for services not included in a Target Sector would be counted as $125,000 by DSLBD when measuring Developer's performance against the CBE Minimum Expenditure.

(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "Director") to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein.

(c) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (*e.g.*, pay without delay programs; establishment of strategic partnerships or mentor-protégé initiatives). In particular, Developer is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs for the Project. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

ARTICLE II
CBE OUTREACH AND RECRUITMENT REPORTS

Section 2.1 Identification of CBEs and Outreach Efforts. Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website (http://dslbd.dc.gov). In particular, Developer shall publish all contracting opportunities for this Project within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit for certification. Throughout the Expenditure Period, Developer or its general contractor/construction manager may (as set forth in Section 4.1) periodically publish notices in any one of the following newspapers primarily serving the District of Columbia: *The Current Newspapers, The Washington Informer,* the *Washington Afro-American, Common Denominator, Washington Blade, Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities in connection with the Project . In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.

ARTICLE III
INFORMATION SUBMISSIONS AND REPORTING

Section 3.1 CBE Utilization Plans. Developer shall submit or require its general contractor to submit a CBE utilization plan to DSLBD for approval before or simultaneously with the execution of this Agreement, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without notifying the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for it or its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable and to the Office of the District of Columbia Auditor ("ODCA").

Section 3.2 Quarterly Reports.

(a) Throughout the Expenditure Period, regardless of whether the CBE Minimum Expenditure is achieved before the end of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports ("Quarterly Reports") for the Project which identify:

(i) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the amount of the contract;

(ii) the nature of the contract including a description of the goods procured or the services contracted for;

(iii) the amount actually paid by Developer to the CBE under such contract that quarter and to date;

(iv) the CBE certification number issued by DSLBD;

(v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and

(vi) the percentage of overall development expenditures which were to CBEs.

(b) The Quarterly Reports shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each calendar-year quarter. The Quarterly Reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Reports unless and until the company is certified by DSLBD as a CBE**.

(i) In order to obtain credit towards the CBE Minimum Expenditure requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor.**

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure if the Developer's utilized contractor/ subcontractor:

(1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;

(2) has a pending application before DSLBD seeking CBE certification;

(3) has an expired CBE certification;

(4) has a CBE certification application that DSLBD denied; or

(5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification is valid for **two years.** If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer may check the DSLBD website: http://lsdbe.dslbd.dc.gov/public/certification/search.aspx

(d) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(e) Concurrently with the submission of the Quarterly Reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report.

(f) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Reports shall contain the caption "CBE MINIMUM EXPENDITURE ACHIEVED." Additionally, the final Quarterly Report shall contain the caption "FINAL QUARTERLY REPORT" and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

Section 3.3 Mandatory Reporting Requirements Meeting. Within ten (10) business days of executing this Agreement, the Developer and ODCA shall meet to discuss the reporting requirements during the Expenditure Period. In the event ODCA is unavailable to meet within 10 business days, Developer and ODCA shall meet on the earliest mutually agreeable day. The

individuals identified below respectively are the reporting point of contacts for the Developer and ODCA.

Benjamin Miller
Managing Partner
1300 H Street NE LLC
1519 Connecticut AVE NW, Suite 200
Washington, DC 20036
202-584-0060
bmiller@westmillcapital.com

Sophie Kamal
Financial Auditor
Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
202- 727- 8998
Sophie.Kamal@dc.gov

ARTICLE IV
GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each construction component of the Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for the development project, as applicable, (the "General Contractor"), that the General Contractor comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and General Contractor have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the General Contractor to assure that the General Contractor will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the General Contractor respectively. Specifically, Developer will require in its contractual agreement with its General Contractor ("GC"), or if the Developer and GC have already entered a contractual agreement prior to the execution of this Agreement work with its GC, to achieve the following actions in any employment or contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

(i) The GC may publish a public notice in one newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, The Current Newspapers*, etc.), for the purpose of soliciting bids for products or services being sought for construction and

renovation projects and will allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.

(ii) The GC will contact DSLBD to obtain a current listing of all CBEs qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at http://dslbd.dc.gov for listing opportunities and for subcontracting compliance monitoring.

(iii) The GC will provide a CBE bidder, that is not the low bidder, an opportunity to provide its final best offer before contract award provided the CBE bid price is among the top 3 bidders.

(iv) The GC will not require that CBEs provide bonding on contracts with a dollar value less than $100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.

(v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

(vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer's payment to the GC.

(viii) The GC commits to verify a contractor/ subcontractor's CBE certification status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a contractor/ subcontractor, in accordance with Article III of this Agreement.

ARTICLE V
EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION

Section 5.1 CBE Equity Participation and Development Participation Requirements:

(i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, ("CBEs") shall receive no less than twenty percent (20%) in sponsor Developer equity participation ("Equity Participation") and no less than twenty percent (20%) in development participation ("Development Participation") in the Project, in accordance with Section 2349a of the Act, D.C. Official Code § 2-218.49a;

(ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant's equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;

(iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;

(iv) **CBE Equity Participant's Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;

(v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and

(vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

Section 5.2 Sweat Equity Contribution. No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain ("sweat equity contribution"). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

(i) A detailed description of the scope of work that the CBE will perform;

(ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;

(iii) The date or time period when the CBE will receive compensation;

(iv) The return, if any, the CBE will receive on its sweat equity contribution; and

(v) An explanation of when the CBE will receive its return as compared to other team members or investors.

Section 5.3 CBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan, managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing, performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

Section 5.4 No Changes in CBE Equity Participation and Development Participation.

(i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no change in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and

(ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.

(i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of

returns for the CBE Equity Participant(s) without the Director's express written consent;

(ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;

(iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate;

(iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled; and

Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.

(i) If there is a transfer of title to any District-owned land that will become part of the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act;

(ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

(a) The CBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and

(b) The CBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor Developer equity in the Project throughout its development.

Section 5.7 CBE Equity Participation and Development Participation Reports. Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be

determined by DSLBD. The reports shall be submitted in accordance with Section 3.2 of this Agreement and shall include information regarding:

(i) Changes in ownership interest of the owners/partners;

(ii) Additions or deletions of an owner/partner;

(iii) Changes in the legal status of an existing owner/partner;

(iv) Changes in the percentage of revenue distribution to an owner/partner;

(v) A description of team member activities; and

(vi) The amount of development fees paid to each team member, participant, partner, or owner.

Section 5.8 Article V of this Agreement Controls.

(i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s)

(ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

Section 5.9 Equity Participation Unmet. If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

ARTICLE VI
CONTINGENT CONTRIBUTIONS

Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure. At the end of the Expenditure Period as defined herein, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer's actual CBE expenditures.

If Developer's actual CBE expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the "Shortfall"). If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.2 herein, Developer shall make the following payments, each a ("Contingent Contribution"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the "Contribution Fund"). The Contribution Fund is therefore **$632,266.**

(i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of **$632,266.**

(ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, **$126,453.**

(iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things[1]:

a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;

b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;

d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that

[1] See Attachment 6 for a list of suggested outreach activities.

represent the Target Audience so that they may provide updated information on available opportunities to their constituents;

e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;

f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request;

g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, **$31,613**.

In the event a CBE hired as part of the Project goes out of business or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry ("Request"). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% ("Approved Deduction"), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

Section 6.2 Failure to Meet Equity and Development Participation Requirements. Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement and of the Land Disposition and Development Agreement.

Section 6.3 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 6.4 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Primary Contact. The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

Section 7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:	Department of Small and Local Business Development 441 4th Street, N.W., Suite 970 North Washington, DC 20001 Attention: Director Tel: (202) 727-3900 Fax: (202) 724-3786
and	Office of the Deputy Mayor for Planning and Economic Development Government of the District of Columbia John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 317 Washington, DC 20004 Attention: Deputy Mayor for Planning and Economic Development Tel: (202) 727-6365 Fax: (202) 727-6703
With a copy to:	Office of the Attorney General John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 407 Washington, DC 20004 Attention: Attorney General Tel: (202) 724-3400 Fax: (202) 347-8922
To ODCA:	Office of the District of Columbia Auditor 717 14th ST NW, Suite 900

Washington, DC 20005
Attention: District of Columbia Auditor
202-727-3600

To Developer: 1300 H Street NE LLC
1519 Connecticut Avenue, NW, Suite 200
Washington, DC 20036
Attention: Benjamin Miller
Tel: (202) 584-0060
Fax (202) 747-3982

and with a copy: Co-Developer
H Street Investment Corporation
501 H Street, NE
Washington, D.C. 20002
Attention: Kenneth J. Brewer, Sr.
Tel: (202) 544-8353
Fax: (202) 506-1212

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

Section 7.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 7.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 7.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 7.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

Attachment 1:	*CBE Minimum Expenditure*
Attachment 2:	*Target Sector List*
Attachment 3:	*Utilization Plan*
Attachment 4:	*CBE Reports*
Attachment 5:	*Vendor Verification Forms*
Attachment 6:	*Suggested Outreach Activities*

Equity Participation and Development Participation Quarterly Report Attachment

Section 7.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

Section 7.12 Recitals. The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

Signatures to follow

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: _____
Tabitha D. McQueen
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 26th DAY OF November 2013

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Acting Director

DEVELOPER, 1300 H STREET NE LLC

By: _____
Benjamin Miller
Managing Partner

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: _____
Tabitha D. McQueen
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2013

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Acting Director

DEVELOPER, 1300 H STREET NE LLC

By: _____
Benjamin Miller
Managing Partner

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

By: _____

Benjamin Miller
Managing Partner, Rise Development LLC
80% Equity Participation in the Project
CBE Number: LSZR32170092014

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

By: _____

Kenneth Brewer
President, H Street Investment Corporation
20% Equity Participation in the Project
CBE Number: LS23566082014

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

1300 H STREET NE LLC
1300 H STREET NE
SQUARE 1026 LOTS 97, 98, 99, 100, 101 and 103
WASHINGTON, D.C.

Attachment 1

11/26/2013

PROJECT OVERVIEW

Project Name:	RL Christian Arts Campus
Project Owner/Sponsor:	1300 H Street NE LLC 1519 Connecticut Ave. NW, Suite 200
Developer & Managing Member:	Rise Development LLC ("Rise Development")
Local Ownership Partners:	H Street Investment Corporation ("HSIC") City First Enterprises
Lead Architect:	Stoiber & Associates
Advisory Neighborhood Commission (ANC):	ANC 6A
Project Location.	Project is located at 1300 H Street NE, Washington, DC 20002.

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

Bank Loan	$	7,963,480
Mezzanine Loan	$	1,000,000
CFE Equity	$	1,000,000
HSIC Equity	$	457,605
Rise Development Equity	$	1,830,422
Total Sources of Funds:	$	12,251,507

USES OF FUNDS - SUMMARY

Total Budget	$	12,251,507	100.00%	
Exclusions	$	5,025,609	41.02%	
Adjusted Budget	$	7,225,898	58.98%	
CBE Minimum Expenditure	**$**	**2,529,064**	**35.00%**	**of the adjusted budget.**

100 - UNIT MULTIFAMILY BUILDING USES OF FUNDS		Total Costs		Exclusions		Adjusted Budget	Justification Request for Exclusion
Acquisition	$	2,754,000	$	2,754,000	$	-	Acquisition costs
Recordation Tax	$	39,933	$	39,933	$	-	Paid to the District
Other Closing Costs	$	221,697	$	221,697	$	-	Closing costs
Acquisition Fee	$	27,540			$	27,540	
Financing							
Title Cost	$	-	$	-	$	-	
Construction Period Interest & Project Carry	$	1,235,435	$	1,235,435	$	-	Interest paid
Loan Fees	$	99,635	$	99,635	$	-	Fees paid to Bank
Borrower Legal Fees	$	-			$	-	

Other Soft Costs					
Legal/Accounting Fees	$	291,600		$ 291,600	
Architecture	$	281,437		$ 281,437	
Engineering	$	168,862		$ 168,862	
Permits	$	17,540	$ 17,540	$ -	Fees paid the District
Expediting	$	10,000		$ 10,000	
Survey	$	4,000		$ 4,000	
Appraisal Fee	$	-		$ -	
Environmental Remediation	$	311,400		$ 311,400	
Construction Insurance	$	40,500		$ 40,500	
Consultants, Other Soft Costs	$	122,515		$ 122,515	
Marketing Costs During Rent-up	$	150,000	$ 150,000		Cost incurred after construction completed.
Real Estate Taxes	$	202,150	$ 202,150	$ -	Taxes paid to the District
Retail Leasing Fee	$	85,752		$ 85,752	
Soft Cost/Financing Contingency	$	68,718	$ 68,718	$ -	Contingency; will include if used.
Construction Hard Costs					
Construction Hard Costs	$	4,269,361		$ 4,269,361	
Sitework	$	460,667		$ 460,667	
General Conditions	$	425,703		$ 425,703	
P&P Bond	$	-		$ -	
General Contractor Fee	$	236,501		$ 236,501	
Construction Contingency	$	236,501	$ 236,501		Contingency; will include if used.
Development Contingency	$	-		$ -	
Developer Fee & Overhead					
Developer Overhead	$	-		$ -	
Developer Fee	$	490,060		$ 490,060	
Subtotals	$	12,251,507	$ 5,025,609	$ 7,225,898	

Total Project Budget	$	12,251,507
Total Exclusions	$	5,025,609
Adjusted Budget	$	7,225,898
CBE Minimum Expenditure	$	**2,529,064**
Contingent Contribution - 25% of CBE Minimum	$	632,266
Section 6.1(i) contribution example	$	632,266
Section 6.1(ii) contribution example	$	126,453
Section 6.1(iv) contribution example	$	31,613

Date: 11-26-13

Approved by: Robert Summer, Acting Director, Department of Small and Local Business Development

Attachment 2

Target Sector List

INSTRUCTIONS

To be included on the Target Sector List, the trade, service, or function must be necessary for the specific project. Thus, the budget allocation for each trade, service, function or area submitted to be included on the Target Sector List must be provided for each request. In addition, it must be asserted, and verified by DSLBD, that no Certified Business Enterprise ("CBE") is able to perform the required service or function based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project.

On page one, please provide a proposed list of trades, services or functions that the Developer believes that no CBE is able to perform, based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project.

On page two, please provide a narrative description outlining the justification for asserting that no CBE is able to perform the required service or function based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project .

Also on page two, please explain the efforts made in identifying that the trade, service, or function should properly be included on the Target Sector List. Efforts may include, but are not limited to, searching the DSLBD database, communications with other developers in an effort to identify specific CBEs, holding pre-bid conferences, working with DSLBD staff to identify CBEs, etc.

NO SUBMISSION FOR THE 1300 H STREET NE PROJECT

Submitted by: _____ Date: _____
(Name of Developer)

Approved by: _____ Date: _____
Robert Summers, Acting Director (DSLBD)

Attachment 2

Target Sector List

(Narrative Description)

NO SUBMISSION FOR THE 1300 H STREET NE PROJECT

Submitted by: _____ Date: _____
(Name of Developer)

Approved by: _____ Date: _____
Robert Summers, Acting Director (DSLBD)

CBE Utilization Plan

PROJECTED PROCUREMENT ITEMS (1)	ESTIMATED VALUE (2)	ESTIMATED BID OPENING (3)	ESTIMATED BID CLOSING (4)	ESTIMATED STARTUP (5)	ESTIMATED COMPLETION (6)	RESTRICTED OR OPEN (7)	CBE CONTRACT AWARDS (8)
CONSULTANTS							
Engineering	$ 168,862	6/1/2013	7/1/2013	7/1/2013	5/1/2017	Open	$ 126,647
Consultants / Other Soft Costs	$ 122,515	6/1/2013	5/1/2014	5/1/2014	5/1/2017	Open	$ 122,515
Architecture	$ 281,437	6/1/2012	7/1/2012	5/1/2014	5/1/2017	Restricted	$ 211,078
Environmental Remediation	$ 311,400	10/1/2015	1/1/2016	1/1/2016	4/1/2016	Open	$ 250,000
Developer Fee	$ 490,060	N/A	N/A	5/1/2014	5/1/2017	Restricted	$ 490,060
CONSTRUCTION							
Construction Hard Costs	$ 4,269,361	10/1/2015	1/1/2016	1/1/2016	5/1/2017	Open	$ 1,067,340
Sitework	$ 460,667	10/1/2015	1/1/2016	1/1/2016	5/1/2017	Open	$ 115,167
General Conditions	$ 425,703	10/1/2015	1/1/2016	1/1/2016	5/1/2017	Open	$ 106,426
General Contractor Fee	$ 236,501	10/1/2015	1/1/2016	1/1/2016	5/1/2017	Open	$ 59,125
TOTALS	$ 6,766,506						$ 2,548,357

NOTES:

(1) The list above is for example purposes only. The column should contain the procurement items as reflected in the Adjusted Budget column in the approved Attachment 1 Do not include amounts from the 'Exclusions' column of the approved Attachment 1

(2) This column should reflect the dollar value for each procurement item as reflected in the approved Attachment 1.

(3) This column should reflect the date bidding will open for each procurement item. *(If the actual date(s) are unknown, enter the estimated date).*

(4) This column should reflect the date bidding will close for each procurment item *(If the actual date(s) are unknown, enter the estimated date).*

(5) This column should reflect the date work will begin for each procurement item. *(If the actual date(s) are unknown, enter the estimated date).*

(6) This column should reflect the date work will be completed for each procurment item.

(7) This column should reflect whether the bidding will be restricted to CBEs only or open to CBEs and non-CBEs.

(8) This column should reflect the estimated dollar value (including Reporting Bonus, if any) for each procurment that will be awarded to CBEs. When totaled, this column must meet or exceed the CBE Minimum Expenditure.

QUARTERLY REPORT
COVER SHEET

Reporting Quarter (e.g. List 1st, 2nd, 3rd, or 4th)	
Report Submission Date	
Project Name	
Address	
Name of General/Prime Contractor and/or Construction Manager	
Project Contact	
Telephone Number	
Fax Number	
Email Address	
Anticipated Project Completion Date	

CBE QUARTERLY REPORT

CBE Name	CBE Number *Note CBEs Must Have Active CBE Certification at the Time Goods/Services Provided and at the Time Payment is Made to CBE to be Included on Quarterly Report (See Requirements under Article III of CBE Agreement)	FEIN	Total # of Employees (DC Residents Only)	DBE (Y/N)	Description of Goods / Services	Target Sector (Y/N)	Total Contract Amount	Actual Dollar Amount Spent this Quarter	Actual Dollar Amount Spent to Date	Multiplier	Adjusted Dollar Amount Spent this Quarter (Incl. Multiplier)	Adjusted Dollar Amount Spent to Date (Incl. Multiplier)
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
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											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
											$0.00	$0.00
						Total:	$0.00	$0.00	$0.00		$0.00	$0.00

EXPENDITURE SUMMARY

Quarter	Total Contract Dollar Amount Expended this Quarter	Total Dollar Amount Expended with CBEs this Quarter	(%) of Total Dollars Expended on CBE this Quarter	Total Contract Dollar Amount Expended to Date	Total Dollar Amount Expended with CBEs to Date	(%) of Total Dollars Expended on CBEs to Date
1			#DIV/0!			#DIV/0!
2			#DIV/0!			#DIV/0!
3			#DIV/0!			#DIV/0!
4			#DIV/0!			#DIV/0!