COUNCIL DRAFT

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

DISTRICT OF COLUMBIA

and

VISION MCMILLAN PARTNERS LLC

for the

MCMILLAN SAND FILTRATION SITE

Dated _____, 2014

SCHEDULES:

EXHIBITS:

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the ___ day of _____, 2014 ("**Effective Date**"), by and between the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Deputy Mayor for Planning and Economic Development (the "**District**") pursuant to delegation by Mayor's Order _____, with an address of John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 317, Washington, DC 20004, and **VISION MCMILLAN PARTNERS L.L.C.**, a District of Columbia limited liability company ("**Developer**"), with an address of c/o EYA, 4800 Hampden Lane, Suite 300, Bethesda, MD 20814, and c/o Trammell Crow Company, 1015 Thomas Jefferson Street, NW, Suite 600, Washington, DC 20007.

RECITALS

R-1. District owns that twenty-five (25) acre parcel of real property, known as the McMillan Sand Filtration Site and situated on North Capitol Street, Washington, D.C. and known for tax and assessment purposes as Lot 0800 in Square 3128 (the "**McMillan Site**") and further described on the legal description attached hereto as Exhibit A.

R-2. District is engaged in pre-development activities, including the planning, zoning and development entitlement process, for the construction of a mixed-use development on the McMillan Site. The proposed mixed-use development will contain residential (including affordable housing), retail and office uses, while also retaining a portion of the McMillan Site as a public park.

R-3. Accordingly, by this Agreement, District desires to convey the fee interest in a portion of the McMillan Site, defined herein as the Property, to Developer to construct Residential Units, including a number of ADUs, together with related improvements, pursuant to the provisions of applicable federal and local laws and the terms and conditions contained herein. The disposition and development of the other portions of the McMillan Site not contained within the Property will be the subject of separate disposition agreements between Developer and District.

R-4. Finding that the Property was no longer required by the District of Columbia for public purposes, the Council of the District of Columbia ("**Council**") approved the disposition of the Property to Developer on _____, pursuant to the _____, Resolution No. _____, (the "**Resolution**"), and an extension to the Resolution approved on _____, pursuant to the _____, Resolution No. _____, (the "**Extension Resolution**"), subject to the terms and conditions set forth therein and incorporated herein by this reference.

R-5. The Property has a unique and special importance and history to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design, construction, management and control necessary and appropriate for a true first class urban destination.

AGREEMENT

NOW, THEREFORE, for and 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 1 - 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:

Acceptable Bank: means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short term deposits or commercial paper of at least Aa3 (or equivalent) by Moody's Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor's Corporation.

Acceptable Letter of Credit: has the meaning given in Section 4.1.4.

Additional Deposit: has the meaning given in Section 4.1.2.

Additional LDAs: means those Land Disposition Agreements of on or about even date herewith between Developer and District for the disposition and development of the other portions of the McMillan Site not contained within the Property.

Additional Soil Testing: has the meaning given in Section 6.1.1 of this Agreement.

ADU: means an affordable dwelling unit to be developed and constructed as part of the Project in accordance with the Affordable Housing Minimum and the Affordable Housing Covenants.

Affiliate: means with respect to any Person ("first Person"), other than any Person which is an entity publicly traded on any recognized exchange or is a fund in which the investors have no control over the day to day operations thereof, (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, general partner, 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.

Affordable Housing Covenant: means a covenant agreement between District and Developer with respect to the for sale residential component of the Project in the form attached hereto as Exhibit B, which, as applicable, shall be recorded in the Land Records, as the same may be amended from time to time.

Affordable Housing Minimum: means the greater of 15% of the total number Residential Units constructed as part of the Project to be used as ADUs or of the number of ADUs required by Zoning Approvals.

Affordable Unit Index: is an index of the ADUs contained in the Project, that identifies: (i) the location of each ADU within each Building; (ii) the approximate square footage and number of bedrooms of each ADU and a schematic drawing showing the layout of the unit; (iii) the total number of ADUs; (iv) the total number of Residential Units; and (v) floor plans showing the

location of each Residential Unit.

Agreement: has the meaning given in the Preamble.

Approved Guarantor: has the meaning set forth in Section 4.2.4.

Approved Mortgage: has the meaning set forth in Section 8.1.3.

Approved Mortgagee: has the meaning set forth in Section 8.1.3.

Architect: means the architect retained by Developer and designated as the "architect of record" for the Project or a Project Phase. In all cases, the Architect must be licensed to practice architecture in the City of Washington, DC.

Building: means a building and its associated improvements constructed as part of the Project.

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

CBE Agreement: means that certain CBE Utilization and Participation Agreement attached hereto as Exhibit C.

CBE Requirement: means the requirements imposed on Developer set forth in and subject to the CBE Agreement.

Certificate of Final Completion: has the meaning given in the Construction Covenant.

Certified Business Enterprise ("CBE"): means an enterprise certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code §§ 2-218.01 *et seq.*).

Closing: has the meaning given in Section 7.1.

Closing Date: has the meaning given in Section 7.1.

Commencement of Construction or Commence Construction: means the time at which Developer has (a) executed one or more Construction Contracts for the Related Improvements and the Residential Units with the Contractor for the applicable Project Phase as to which construction work is commencing, (b) given its Contractor notice to proceed with under such Construction Contract for the Related Improvements, and (c) obtained all Permits required to commence construction of the Related Improvements.

Completion of Construction: has the meaning given in the Construction Covenant.

Concept Plans: are the plans attached hereto as Schedule 2.1(a) and Schedule 2.1(b).

Confidential Information: has the meaning given in Section 17.30.1.

Construction Contract: means a contract with a Contractor for the construction of the Project

or a Project Phase.

Construction Covenant: means a covenant agreement among District and Developer in the form attached hereto as Exhibit D.

Construction Plans and Specifications: means detailed architectural drawings and specifications for all aspects of the applicable Project Phase, which shall be prepared and signed by the Architect. Construction Plans and Specifications shall be used to (i) obtain the Permits, (ii) obtain detailed cost estimates, and (iii) solicit and receive construction bids, and must at a minimum provide sufficient details to achieve such purposes.

Construction Schedule: has the meaning given in Section 8.1.6.

Contractor: means a general contractor for the Project or any portion thereof.

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.

Council: is defined in the Recitals.

DCFOIA: has the meaning given in Section 17.30.

DCMR: means the District of Columbia Municipal Regulations.

Deposit: has the meaning given in Section 4.1.

Developer: has the meaning given in the Preamble.

Developer's Agents: means Developer's agents, employees, consultants, contractors, attorneys and representatives.

Development Plan: has the meaning given in Section 8.1.1.

Development Site: means an individual parcel on the Property (including the below grade area under such portion of the Property), where a Building will be constructed by Developer as part of the Project.

District: has the meaning given in the Preamble.

DOES: means the District Department of Employment Services or any successor agency.

DSLBD: means the District Department of Small and Local Business Development or any successor agency.

Effective Date: means the date of full execution and delivery of this Agreement, which date shall be inserted by District on the first page hereof.

Environmental Law: means any federal or District law, ordinance, rule, regulation, requirement, code, resolution, order or decree (including consent decrees and administrative and executive orders) in effect on the date of this Agreement which regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement or disposal of any Hazardous Material or Permitted Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Sections 2601, et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., their District analogs, and any other applicable federal or District statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material or Permitted Material.

Equity Commitment: means the commitment of Developer to provide equity for the Project pursuant to Section 8.1.3.

ERA: means that certain Exclusive Rights Agreement dated as of April 23, 2010 between District and Developer with respect to the McMillan Site.

Event of Default: has the meaning given in Section 15.1.

Extension Period: has the meaning given in Section 11.3.1.

Extension Resolution: is defined in the Recitals.

Final Development Plan: has meaning given in Section 8.1.1.

Final Project Budget: has the meaning given in Section 5.2.3.

Final Project Funding and Financing Plan: has the meaning given in Section 5.1.

Financing Documents: has the meaning given in Section 8.1.4.

Finished Pad: has the meaning given in Section 9.2.

First Source Agreement: means that certain First Source and Workforce Development Employment Agreement between Developer and DOES, a copy of which is attached hereto as Exhibit F.

Force Majeure: means an act or event, including, as applicable, an act of God, act of the public enemy, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, 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, requisitions and laws or orders of government or civil, military, or naval authorities, governmental delays, or any other cause

(including but not limited to a delay by a Party other than the Party seeking the extension) whether similar or dissimilar to the foregoing, that is not within the reasonable control of the Party seeking the extension or any of its Primary Parties, so long as such act or event, in each case, (i) is not due to the fault or negligence of such Party or any of its Primary Parties, (ii) is not reasonably foreseeable and avoidable with reasonable efforts by such Party or any of its Primary Parties, and (iii) results in a delay in performance by such Party, but specifically excluding (A) shortage or unavailability of funds or financial condition and (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Final Development Plan is no longer practicable under the circumstances.

GFA: means "gross floor area" as that term is defined in the District of Columbia Zoning Regulations, 11 DCMR § 199.1.

Governmental Authority: means any and all federal or District governmental or quasi-governmental municipal corporation, board, agency, authority, department or body having jurisdiction over all or any portion of the Property or the Project or Developer.

Green Building Act: has the meaning given in Section 9.8.

Guaranty(ies): means the Vertical Development Completion Guaranty and any permitted substitutions or replacements of any of the foregoing.

Guarantor Submissions: has the meaning given in Section 4.2.4.

Hazardous Materials: means any flammable, explosive, radioactive or reactive materials, any asbestos (whether friable or non-friable, but excluding naturally occurring asbestos), any pollutants, contaminants or other hazardous, dangerous or toxic chemicals, materials or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, or toxic mold or fungi, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic materials," "contamination," and/or "pollution" within the meaning of any Environmental Law, other than Permitted Materials.

Horizontal Development: has the meaning given in Section 9.1.

Horizontal Development Budget: has the meaning set forth in Section 5.2.4.

Horizontal Development Funds: has the meaning set forth in Section 9.3.

Indemnified Party and Indemnified Parties: have the meanings given them in Section 12.4.

Initial Project Budget: has the meaning given in Section 5.2.1.

Initial Project Funding and Financing Plan: has the meaning given in Section 5.1.

Institutional Lender: means a lender or investor that is not a Prohibited Person, and is: (i) a commercial bank, investment bank, investment company, savings and loan association, trust

company or national banking association, acting for its own account and/or as agent for one or more Institutional Lender(s); (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company; (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(x) hereof; (iv) a public employees' pension or retirement system; (v) a pension, retirement, or profit sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit, hedge fund, private equity fund or securitization trust or similar investment entity; (vii) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (viii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds; (ix) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in the Project, or any portion thereof, is obtained) of at least $200,000,000; (x) a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended (or an institution substantially similar to the foregoing), provided that such entity (a) has total assets (in name or under management) in excess of $200,000,000 and capital/statutory surplus or shareholders' equity in excess of $250,000,000, and (b) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties; (xi) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of one or more of the foregoing entities (including, without limitation, any of the foregoing entities described in clauses (i) through (x) when acting as trustee or manager for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders (but provided that such other lender(s) or investor(s) are not Prohibited Persons); or (xii) such other lender or equity investor approved by District, which approval shall not be unreasonably withheld or conditioned, provided that such other lender or equity investor is at the time of making the loan or investment of a type which is then customarily used as an investor or lender on projects like the portion of the Project for which the proceeds of such loan or equity investment are to be used.

Interim Project Budget: has the meaning given in Section 5.2.2.

Interest in the Project: means a leasehold, subleasehold or fee interest in the Project, in any portion thereof or in any Building or other improvement constructed on any portion of the Project.

Key Member: means EYA, LLC.

Land Records: means the land records of the District of Columbia Recorder of Deeds.

Laws: means all applicable local, state and federal laws, ordinances, rules, codes, regulations, resolutions, executive orders and standards, including, without limitation, Environmental Laws, zoning requirements, building codes and all laws relating to accessibility for persons with disabilities.

LDA Deposit: has the meaning given in Section 4.1.1.

Loan Commitment: has the meaning given in Section 8.1.3.

Material Change: means (i) a change in the construction and development work provided for in the Final Development Plan that would require Developer to obtain a modification, waiver or amendment to the Zoning Approvals; (ii) any change in size or design from the Final Development Plan substantially affecting the general appearance of the Buildings in the Project; (iii) any changes in exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Final Development Plan; (iv) any substantial change in landscape planning and design or changes in size or quality of exterior pavement, exterior lighting and other exterior site features from the Final Development Plan not permitted by the Zoning Approvals; (v) any change that affects the number of ADUs; and (vi) any reduction in the level of interior finish from the Final Development Plan as it relates to the ADUs not permitted by the Affordable Housing Covenant.

Material Permit: means any of the following: (a) any permit the application for which is inconsistent with, or would require a modification to, the Zoning Approvals; (b) any permit required from the Board of Zoning Adjustment or the Zoning Commission under Title 11 DCMR; (c) any application or approval for any public street or alley closing required for the Project; any other permit or application which the regulatory authority or entity issuing the permit specifically requires be signed or certified by the District as the fee owner of the Property; and (e) any amendments or modifications to any of the foregoing.

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

McMillan Site: has the meaning given in the Recitals.

Outside Closing Date: has the meaning given in Section 7.1.

Parties: means the collective reference to Developer and District.

Permits: means all demolition, site, building, and other permits, approvals, licenses and/or rights required or necessary to construct a Building or the Related Improvements.

Permitted Exceptions: has the meaning given in Section 6.10.3.

Permitted Materials: means any materials or substances regulated by Environmental Laws that are reasonably and customarily used during construction or use of a project similar to the Project, provided that same are used, handled and stored in compliance with all applicable Environmental Laws.

Permitted Transfers: has the meaning given in Section 13.4.

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

Phase 1: has the meaning given in Section 2.2.

Phase 1 Property: has the meaning given in Section 2.2.

Phase 2: has the meaning given in Section 2.2.

Phase 2 Property: has the meaning given in Section 2.2.

Pre-Vertical Development Work: means (i) the development of the metes and bounds legal description of each Development Site and (ii) the subdivision of each Development Site into a separate tax and record lot.

Prohibited Person: means any Person who or which (a) has been convicted of a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) perjury, (v) conspiracy to commit a crime, (vi) making false statements to a government agency, (vii) improperly influencing a government official, and (viii) extortion; (b) could be debarred if the standards applied in Title 27, Section 2213 of the DCMR were applied to such Person's failure to satisfy a contractual obligation to District; (c) is on the District's list of debarred, suspended or ineligible Persons; or (d) is a Restricted Person.

Project: means the development and construction of Phase 1 and Phase 2, including the Related Improvements and the Pre-Vertical Development Work, in accordance with this Agreement, the Final Development Plan, the Related Agreements, the Zoning Approvals and Laws, but excludes the Horizontal Development.

Project Costs: means all customary costs that are for or related to planning, design, development, renovation or construction of the Project and the performance of the obligations of Developer under this Agreement and the Related Agreements, and shall include all hard costs (including, without limitation, costs of labor and materials) and all soft costs (including, without limitation, financing costs, interest costs, costs of completion bonds where applicable, title insurance, Permits and licenses, the costs incurred in connection with the retention of architects, engineers, consultants, surveyors, development fees and attorneys and construction escrows), and contingencies.

Project Phase: shall mean either Phase 1 or Phase 2, as applicable.

Property: has the meaning given in Section 2.2.

Property Work: means the work that is set forth in Section 9.2.

Public Amenities: has the meaning given in Section 9.5.

Public Infrastructure: has the meaning given in Section 9.4.

Purchase Price: has the meaning given in Section 3.2.

Purchase Price Schedule: means the schedule setting forth the Purchase Price for each Project Phase, attached hereto as Schedule 3.2.

Related Agreements: means, collectively, any of the following to which Developer is a party:

the Construction Covenant, the Special Warranty Deeds, the CBE Agreement, and the First Source Agreement.

Related Improvements: all infrastructure and common amenities required for development of Residential Units on the Property, including but not limited to, any interior roadways and drives, storm water maintenance systems, benches, sidewalks and other amenities expressly contemplated in the final Construction Plans and Specifications for the Project (or any Project Phase, as applicable); provided, however, that in no event shall "Related Improvements" include the Horizontal Development.

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 receptacles containing any Hazardous Materials or Permitted Materials).

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

Resolution: is defined in the Recitals.

Restricted Person: has the meaning given in Section 10.2.12(2).

Review Period: has the meaning given in Section 8.3.1.

Schedule of Performance: means that schedule of performance attached hereto as Exhibit E, which has been approved by District as of the Effective Date, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form), together with the dates for submission of documentation for the Project required under this Agreement, which schedule shall be attached to the Development Plan for the Project and to the Construction Covenant, as such schedule of performance may be amended from time to time by agreement of the parties. The Schedule of Performance shall be subject to events of Force Majeure. In the case of work to be performed by Developer, delays caused by District in completing the Horizontal Development shall result in a day-for-day delay in the dates set forth in the Schedule of Performance.

Second Notice: means that notice given by Developer to District in accordance with Section 8.3.3 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 TEN BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION ORIGINALLY SUBMITTED ON (DATE OF DELIVERY OF SUCH SUBMISSION)]"; and (c) be delivered in the manner prescribed in Article 16, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

Settlement Agent: means the Title Company.

Submission Approval/Disapproval Notice: has the meaning given in Section 8.3.1.

Special Warranty Deed: a deed in the form attached hereto as Exhibit G.

Studies: has the meaning given in Section 6.1.1.

Study Period: has the meaning given it in Section 6.1.1.

Submissions: means those certain additional plans, specifications and other documents and other matters identified in Article 8 and required of Developer by District in order to develop, construct and finance the Project.

Surveys: has the meaning given in Section 6.10.2.

Title Company: means Capitol Title Insurance Agency, Inc., as agent acting on behalf of First American Title Insurance Company, or such other nationally recognized title company acceptable to Developer and District.

Title Commitments: has the meaning given in Section 6.10.1.

Transfer: means any sale, assignment, conveyance, ground lease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Agreement, a portion of the Project, any Related Agreement, or any Buildings or other improvements constructed on the Property, or of any portion of or interest in any of the foregoing, or any contract or agreement to do any of the same. As used in this Agreement, solely as to Developer, a Transfer shall also be deemed to have occurred if: (i) in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), (ii) there is a change in Control of Developer from that existing as of the Effective Date, or (iii) the CBE Requirement is no longer satisfied. Notwithstanding the foregoing, the following shall not constitute a Transfer: (a) any sale, assignment, conveyance, lease, trust, power, encumbrance or other transfer of the shares of stock in a publicly traded corporation, (b) any dilution of interests in Developer as a result of the admission of, and the preferred equity contributions from, an Institutional Lender as a non-managing member or limited partner with rights typical of institutional investors, (c) any dilution of a Member's interest in Developer as a result of the admission of a non-managing member or limited partner necessary to satisfy the CBE Requirement, and (d) any change in Control of Developer, which change is caused by the bankruptcy of such Person or death or disability of an individual, provided, that Developer promptly provides notice of such transfer to District and identifies a substitute interest holder that is not a Prohibited Person, which substitute interest holder shall be subject to the approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. Further, the term Transfer as used in this Agreement shall not include any transfer of ownership interest in areas of the Property being dedicated as common areas and being transferred to a property owners' association for the joint ownership and maintenance thereof.

Unit Certificate of Completion: has the meaning given in the Construction Covenant.

Vertical Development Completion Guaranty: means an unconditional guaranty in the form attached hereto as Exhibit H of the Vertical Development Construction Obligations for the Project.

Vertical Development Construction Obligations: means (A) the full and complete performance, prior to the expiration of all applicable notice and cure periods, of all of Developer's agreements, obligations and covenants to (i) construct, complete and pay for each Project Phase when and as required by the Schedule of Performance, subject to events of Force Majeure, (ii) remove from each Development Site (or portion thereof) all liens and claims of lien arising from the performance of the obligations described in the preceding clause (i), and (iii) pay in full all amounts due to any Contractor, subcontractor, or materialman who is engaged at any time in work or supplying materials for the construction of a Project Phase, in each case in accordance with this Agreement, the Construction Covenant, the Zoning Approvals, all Laws, the Final Development Plan and the final Construction Plans and Specifications; and (B) such related payment, performance and indemnity obligations as set forth in the Vertical Development Completion Guaranty.

Zoning Approvals: Any and all zoning, land use, planning, subdivision, historic preservation and similar consents and approvals of any Governmental Authority (including, to the extent applicable, the Office of Planning, the Zoning Commission, the Board of Zoning Adjustment, the Commission of Fine Arts and the National Capital Planning Commission) that may be required under Law to construct the Project, including without limitation, any large tract review, planned unit development, rezoning, text amendment, variance, approvals for public street and alley closures and special exception.

ARTICLE 2 - DESCRIPTION OF PROJECT

2.1 Project. Pursuant to the Concept Plans for Phase 1 and Phase 2, attached hereto as Schedule 2.1(a) and Schedule 2.2(b) (collectively, the "**Concept Plans**"), the Project consists of the development of the Residential Units, including the ADUs, together with the Related Improvements.

2.2 Phases. The Project shall be completed in two (2) Project Phases. "**Phase 1**" shall consist of the development of Residential Units and a number of ADUs, together with Related Improvements on the Development Sites within the "**Phase 1 Property**", which is further described and shown on Schedule 2.2(a) attached hereto. "**Phase 2**" shall consist of the development of Residential Units and a number of ADUs, together with Related Improvements on the Development Sites within the "**Phase 2 Property**", which is further described and shown on Schedule 2.2(b) attached hereto. Collectively, the Phase 1 Property and Phase 2 Property shall constitute the "**Property**".

2.3 Affordable Housing. As contemplated in Section 9.6.3 and the Affordable Housing Covenants, the Project shall contain an affordable housing component that is no less than the Affordable Housing Minimum.

ARTICLE 3 - CONVEYANCE; PURCHASE PRICE

3.1 Conveyance. At Closing for each Project Phase, the Property shall be conveyed in fee simple to Developer by Special Warranty Deed. The District shall execute a separate Special Warranty Deed for each Project Phase in the form attached hereto as Exhibit G ("**Special Warranty Deed**" and collectively, the "**Special Warranty Deeds**").

3.2 Purchase Price. The purchase price payable by Developer to District for each Project Phase shall be determined in accordance with the Purchase Price Schedule attached hereto as Schedule 3.2 (the "**Purchase Price**"). The Purchase Price shall be payable in immediately available funds to District at Closing on each Project Phase.

ARTICLE 4 - DEPOSITS AND GUARANTIES

4.1 Deposit. The LDA Deposit and Additional Deposit are collectively referred to herein as the "**Deposit.**" The Deposit shall be in the form of one or more Acceptable Letters of Credit which shall be divisible by Project Phase. Subject to the remaining terms of this Agreement, the Deposit shall be security for the performance by Developer of all of Developer's obligations, covenants, conditions and agreements with respect to each Project Phase under this Agreement.

4.1.1 LDA Deposit. Upon execution of this Agreement, Developer shall deliver to District an Acceptable Letter of Credit, which shall be in the amounts and be allocated to the Project Phases as set forth on the Deposit Schedule attached hereto as Schedule 4.1.1 (the "**LDA Deposit**").

4.1.2 Additional Deposit. Upon Commencement of the Property Work on a Project Phase by the District, Developer shall deliver to District an Acceptable Letter of Credit, which shall be in the amounts and be allocated to the Project Phases as set forth on the Deposit Schedule (the "**Additional Deposit**").

4.1.3 Return of Deposit. Upon issuance of a Certificate of Final Completion, the applicable LDA Deposit and Additional Deposit for that Project Phase shall be returned to the Developer.

4.1.4 Acceptable Letters of Credit. Each letter of credit delivered by Developer to District pursuant to this Section 4.1 shall be in the form attached hereto as Exhibit I, provided that each such letter of credit shall be: (a) issued by an Acceptable Bank for the account of Developer; (b) made payable to District; (c) payable at sight upon presentment of the original thereof to a Washington, D.C. metropolitan area branch or office of the issuer (or such other branch or office of the issuer as may be reasonably acceptable to District) of a simple sight draft stating only that District is permitted to make such draw on the letter of credit under the terms of this Agreement and setting forth the amount that District is drawing; (d) of a term not less than one (1) year; and (e) at least thirty (30) days prior to the then-current expiration date of such letter of credit, either (1) renewed (or automatically and unconditionally extended) from time to time until the earlier of one year from its then expiration date or the ninetieth (90th) day after the issuance of the Phase 1 Certificate of Final Completion and/or the Phase 2 Certificate of Final Completion, as applicable, or (2) replaced by Developer with another letter of credit meeting the requirements of this Section. A letter of credit satisfying all of the requirements set forth above shall be an "**Acceptable Letter of Credit**." Developer agrees that if District uses, applies or retains any part of the Deposit in accordance with this Agreement, within ten (10) Business Days following District's draw on the Acceptable Letter of Credit, Developer shall replenish the Deposit to the amount then required under the terms of this Agreement.

4.2 Guaranties.

4.2.1 Vertical Development Completion Guaranty. Developer shall deliver to District, at Closing, from the Approved Guarantor(s), a Vertical Development Completion Guaranty with respect to each Project Phase.

4.2.2 District Remedies and Approved Guarantor's Obligations. In the event Developer fails to perform any of the Vertical Development Construction Obligations on or before the times such matters are required to be done (subject to any applicable notice or cure periods), District shall have the rights set forth in the applicable Vertical Development Completion Guaranty.

4.2.3 Release of Guaranties. Upon the issuance of a Certificate of Final Completion for a Project Phase, the applicable Approved Guarantor shall be deemed automatically released by District from all obligations arising under the applicable Vertical Development Completion Guaranty with respect to such Project Phase, provided that at such time there shall be (i) no outstanding Vertical Development Construction Obligations remaining unsatisfied with respect to such Project Phase, and (ii) no Event of Default under this Agreement or the Construction Covenant shall exist with respect to such Project Phase. Notwithstanding the provisions above, no release of an Approved Guarantor shall relieve such Approved Guarantor from its obligations arising under any other Project Phase.

4.2.4 Approved Guarantors. Each guaranty required by this Section 4.2 shall be from one or more Persons approved by District in District's sole discretion (each an "**Approved Guarantor**"), which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Vertical Development 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; provided, however, an Approved Guarantor shall not be a Prohibited Person. Notwithstanding the foregoing, District acknowledges that the Persons listed on Schedule 4.2.4 may serve as Approved Guarantors for the purposes of delivering each of the Guaranties required to be delivered at Closing by Developer to District pursuant to this Agreement. In connection with the submission of any proposed guarantor for approval by District, the applicable Person shall provide to District the current financial statements and balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of such proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other non-contingent 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) (collectively, the "**Guarantor Submissions**"). Notwithstanding the foregoing, in the event any approved guarantor is a publicly traded entity, Guarantor Submissions for such Person shall be limited to publicly available filings then on record with the United States Securities and Exchange Commission. In the event District reasonably determines and so notifies Developer that there has been a material adverse change in any Approved Guarantor's financial condition, Developer shall, (1) if such determination is made at or after the Closing and notice is given, no later than ninety (90) days following written demand of District, provide a replacement Approved Guarantor; and, (2) if such determination is made by District prior to Closing and notice given, Developer shall prior to Closing and as a condition precedent to District's obligation to proceed to Closing hereunder, provide a replacement Approved Guarantor. No later than thirty (30) days prior to the date an

Approved Guarantor must deliver a guaranty to District in accordance with this Agreement or any Related Agreement, such Approved Guarantor shall submit to District updated Guarantor Submissions.

ARTICLE 5 - PROJECT FUNDING AND FINANCING PLAN; BUDGETS

5.1 Project Funding and Financing. Developer has prepared an initial plan describing the sources and uses of funds for the Project based upon the Concept Plan (including the sources and uses of public and private funds to be invested in the Project), which plan is attached as Schedule 5.1 (the "**Initial Project Funding and Financing Plan**"). In connection with Developer's submission of Developer's proposed final version of the Development Plan to District for District's approval, Developer shall submit to District an updated Initial Project Funding and Financing Plan, which after approval by District shall be the "**Final Project Funding and Financing Plan**".

5.2 Budgets.

5.2.1 Initial Budget. Developer has determined an initial budget for the Project based upon the Concept Plan (the "**Initial Project Budget**"), which Initial Project Budget sets forth a cost itemization based on current best estimates of all Project Costs (direct and indirect) by item and shall include a breakdown of costs by Project Phase. The Initial Project Budget is set forth on Schedule 5.2.1, and shall be refined by Developer as the Development Plan is developed.

5.2.2 Interim Budget. In connection with the submission of the Development Plan, Developer shall submit to District an updated and revised Initial Project Budget prepared by Developer specifying all Project Costs (direct and indirect), and Developer's best estimate of the amount thereof, including (a) the costs of all labor, materials, and services necessary for the construction of the Project, and (b) 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. The updated and revised budget to be prepared by the Developer pursuant to the terms hereof shall be the "**Interim Project Budget**". Such budget shall include a breakdown of cost by Project Phase.

5.2.3 Final Budget. In no event later than the fifth (5^{th}) day following the date on which Developer obtains all of the Permits necessary to Commence Construction, Developer shall submit for District's approval, a final revision of the Interim Project Budget prepared by Developer setting forth the final projected Project Costs by item with respect to the development of the Project (such revised budget being the "**Final Project Budget**"). The Final Project Budget shall be a final revision of the Interim Project Budget to reflect all changes that are necessary to account for the costs of changes made to all Submissions since the initial submission of the Interim Project Budget. The Final Project Budget shall include the budget for each Project Phase. Developer shall update the Final Project Budget (or certify that there are no changes to the Final Project Budget as of such date) in a final statement delivered at Closing. Each such proposed update shall be deemed an amendment to the Final Project Budget. As used herein, the term "Final Project Budget" shall include any such changes.

5.2.4 Horizontal Development Budget. The District has determined an initial budget

for the Horizontal Development (the "**Horizontal Development Budget**"), which Horizontal Development Budget sets forth a cost itemization based on current best estimates of all costs (direct and indirect) by item and by element (i.e., Property Work, Public Infrastructure and Public Amenities) for the Horizontal Development, which will be promptly provided to Developer when it has been prepared. The District shall update the Horizontal Development Budget periodically and shall provide updates to Developer upon request. The term "Horizontal Development Budget" shall include any updates thereto.

ARTICLE 6 - RIGHT OF INSPECTION; CONDITION OF PROPERTY; TITLE

6.1 Feasibility Studies; Access to Property.

6.1.1 Studies. Developer acknowledges that within one hundred and twenty (120) days after the Effective Date (the "**Study Period**"), it shall perform any physical surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations as Developer has deemed necessary or desirable (collectively, "**Studies**") to evaluate the Property and the ability to develop same in accordance with this Agreement, using experts of its own choosing and to otherwise access the Property for the purposes of performing such Studies as it deems necessary or appropriate. In the event Developer determines during the Study Period that the Property is not suitable for the Developer's purposes, then Developer shall have the right, at any time on or prior to final day of the Study Period, to terminate this Agreement by written notice to District, upon which the Deposit shall be immediately returned to Developer, this Agreement shall terminate, and neither party shall have any further right or obligation hereunder other than Developer's indemnities pursuant to this Article 6 which shall survive such termination. Prior to Closing, District shall permit Developer and Developer's Agents to continue to have access to the Property at reasonable times for the purpose of performing all such tests and studies. Developer shall provide District with copies of all Studies (and any additional tests or studies) and shall cause the Person preparing same to include District as a party to whom same are certified (or shall provide reliance letters in favor of District from such Person).

Not later than ____ days after the Effective Date, District will cause to be undertaken the additional soil borings and tests on the Property identified on Schedule 6.1.1 attached hereto (the "**Additional Soil Testing**"). Subject to Section 6.7, District agrees to promptly provide Developer with a copy of the results of those tests. Promptly following receipt of the reports reflecting the Additional Soil testing, District shall determine whether District believes that the cost of the Property Work necessary to achieve Finished Pad status pursuant to Schedule 9.2 will increase by more than fifteen percent (15%) based upon the results of the Additional Soil Testing, and provide written notice thereof to Developer within thirty (30) days of the District's receipt of the Additional Soil Testing results, together with a summary of any anticipated action by the District under Section 6.4.

6.1.2 Entries on Property. Developer understands and agrees that all entries onto the Property in connection with the Studies shall be conducted upon at least twenty-four (24) hours' prior notice to District and at such reasonable times as may be agreed by District, Developer, and at District's option, in the presence of one or more representatives of District. All Studies shall be conducted at Developer's sole cost and expense. No entries on to the Property shall unreasonably interfere with the use of the Property by District or disrupt District's activities on

the Property, nor shall Developer's entries damage the Property in any material respect. No tests or inspections shall be invasive in any material respect (unless Developer obtains District's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed). All tests and studies shall be conducted in accordance with standards customarily employed in the industry and in compliance with all Laws. Following each entry by Developer and Developer's Agents on the Property, Developer shall restore any conditions changed by Developer or such Persons at the Property to a condition which is as near to its original condition as existed prior to any such entries. Notwithstanding anything to the contrary in this Agreement, the foregoing obligation to restore the Property shall survive any termination of this Agreement unless Closing shall occur in accordance with the provisions of this Agreement. District shall reasonably cooperate with Developer in its inspections of the Property but shall not be obligated to incur any liability or expense in connection therewith.

6.1.3 Confidentiality. Developer covenants and agrees that Developer shall (and Developer shall direct Developer's Agents to) keep confidential all non–public information obtained by Developer (pursuant to the Studies or otherwise) as to the condition of the Property; provided, however, that Developer may disclose such information (i) to its Members, Developer's Agents, and Developer's potential lenders and investors so long as Developer directs such parties to maintain such information as confidential and (ii) as it may be legally required so to do. Developer's foregoing obligation of confidentiality shall survive any termination of this Agreement.

6.2 Intentionally Deleted.

6.3 Access to Property and Insurance.

6.3.1 Indemnification. Developer hereby indemnifies the Indemnified Parties and holds the Indemnified Parties harmless and shall defend the Indemnified Parties (with counsel reasonably satisfactory to District) from and against any and all losses, liabilities, damages, costs, expenses (including reasonable attorneys' fees and court costs), mechanics' liens, claims and judgments actually incurred or suffered by or claimed against any Indemnified Party arising out of or resulting from any Studies or other activities at the Property conducted by Developer or Developer's Agents and not resulting from the negligence or willful misconduct of any Indemnified Party. Notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless the Indemnified Parties shall survive Closing or any termination of this Agreement. Further notwithstanding the foregoing, such obligation to indemnify shall not include the mere discovery of existing conditions.

6.3.2 Insurance. Developer shall, at least twenty-four (24) hours prior to any entry onto the Property for the purpose of conducting its Studies and other investigations of the Property, provide District with evidence reasonably satisfactory to District showing that Developer and Developer's Agents who are to enter upon the Property are adequately covered by policies of insurance issued by a carrier reasonably acceptable to District insuring District (and such of District's advisors and property managers identified by District from time to time for such purpose) against any and all liability arising out of Developer's or Developer's Agents' entry (including, without limitation, any loss or damage to the Property, with coverage in the amount of not less than $5,000,000 per occurrence). Developer agrees that it will cause any such

person accessing the Property to be covered by not less than $5,000,000 liability insurance insuring all activity and conduct of such person while exercising such right of access. Developer hereby represents and warrants that it carries not less than $5,000,000 general liability insurance with a contractual liability endorsement which insures its indemnity obligations under this Agreement, and which names District as an additional insureds thereunder.

6.4 Increases in Property Work Costs; Remediation Costs.

(a) If the District's costs of completing the Property Work before Closing exceeds or is expected to exceed more than 115% of the costs budgeted therefor in Horizontal Development Budget, the District shall have the option, by written notice to Developer given within sixty (60) days of Closing, to terminate this Agreement upon which the entirety of the Deposit shall be returned to Developer and neither party shall have any further right or obligation hereunder. Notwithstanding the foregoing, in the event the District provides the foregoing termination notice and Developer, within thirty (30) days thereafter notifies District that it will elect to nevertheless proceed to Closing irrespective that any Property Work described herein for the applicable Project Phase shall not be completed prior to the Closing for such Project Phase, then the District's termination notice shall be void and the parties shall proceed hereunder to Closing in accordance with the remaining terms of this Agreement (including the applicable terms of Section 9.3 below). In furtherance of the foregoing, should Developer proceed to Closing as aforesaid notwithstanding that any Property Work remains incomplete, Developer shall have the right to perform any then-incomplete Property Work upon written notice given to District, in which event District shall cooperate fully with Developer to assign any contracts or other agreements, approvals, permits or other documents or instruments necessary to effectuate the foregoing right of self performance.

(b) After Closing, Developer shall pay all costs and expenses (including, without limitation, attorneys' fees and court costs) resulting from any and all environmental conditions caused by Developer on the Property; provided, however, that Developer shall not be responsible for losses, costs, claims, damages, liabilities or causes of action (including, without limitation, attorneys' fees and court costs) incurred or suffered by any Indemnified Party to the extent same arises from the negligence or willful misconduct of any Indemnified Party and further shall not be responsible for losses, costs, claims, damages, liabilities or causes of action (including, without limitation, attorneys' fees and court costs) incurred or suffered by any Indemnified Party to the extent same exists as of the date hereof.

6.5 Soil Characteristics. Pursuant to D.C. Official Code § 42-608(b), but not as a representation or warranty for which District shall have any liability hereunder, Developer is hereby advised by District that the characteristic of the soil of the Property as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District published in 1976, as the same may be amended from time to time, and as shown on the Soil Maps of the District at the back of that publication, is _____. For further information, Developer can contact a soil testing laboratory, the District Department of Environmental Services (District Department of the Environment) or the Soil Conservation Service of the United States Department of Agriculture.

6.6 Underground Storage Tanks. In accordance with the requirements of the D.C.

Underground Storage Tank Management Act of 1990, as amended by the District Underground Storage Tank Management Act of 1990 Amendment Act of 1992, D.C. Official Code §§ 8-113.01, et seq (2001) and the D.C. Underground Storage Tank Regulations, 20 DCMR Chapters 55-67, and 70, but not as a representation or warranty for which District shall have any liability hereunder, District hereby informs Developer that, to the best of the District's knowledge, except as set forth on Schedule 6.6, no underground storage tank has ever been removed from the Property during the period of time District has owned the Property, no underground storage tanks are currently located on or under the Property, and District does not know of any prior use of the Property which suggests that underground storage tanks may be or have been used on the Property. 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., 5th Floor, Washington, DC 20002, telephone (202) 535-2600.

6.7 No Reliance on Documents. Except as set forth in Section 10.1, District makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by District to Developer in connection with the transactions contemplated hereby. Developer acknowledges and agrees that all materials, data and information delivered by District to Developer in connection with the transactions contemplated hereby are provided to Developer as a convenience only and that any reliance on or use of such materials, data or information by Developer shall be at the sole risk of Developer. Without limiting the generality of the foregoing provisions, Developer acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by District to Developer shall be for general informational purposes only, (b) Developer shall not have any right to rely on any such report delivered by District to Developer (except to the extent permitted by the Person that prepared such report), but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Developer with respect thereto, and (c) neither District nor the Person that prepared any such report delivered by District to Developer shall have any liability to Developer for any inaccuracy in or omission from any such report.

6.8 DISCLAIMERS; "AS IS". EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 10.1 OF THIS AGREEMENT, AS MAY BE SET FORTH IN ANY DOCUMENT DELIVERED BY DISTRICT AT CLOSING, AND EXCEPT WITH RESPECT TO THE PROPERTY WORK REQUIRED TO BE UNDERTAKEN BY DISTRICT PURSUANT TO THE TERMS HEREOF, IT IS UNDERSTOOD AND AGREED THAT DISTRICT IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING (OTHER THAN WITH RESPECT TO DISTRICT'S OBLIGATION TO OBTAIN THE ZONING APPROVALS HEREUNDER), TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION NOT CAUSED BY DISTRICT DURING THE PERFORMANCE OF THE PROPERTY WORK, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE PROPERTY (OTHER

THAN AS SET FORTH IN SECTION 10.1), THE STATUS OF ANY LITIGATION OR OTHER MATTER (OTHER THAN AS SET FORTH IN SECTION 10.1.5), OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF DISTRICT TO DEVELOPER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING DISTRICT SHALL CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS". DEVELOPER IS ADVISED THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY EXIST AT THE PROPERTY AND THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY CAUSE PHYSICAL INJURIES, INCLUDING, WITHOUT LIMITATION, ALLERGIC REACTIONS, RESPIRATORY REACTIONS OR OTHER PROBLEMS, PARTICULARLY IN PERSONS WITH IMMUNE SYSTEM PROBLEMS, YOUNG CHILDREN AND ELDERLY PERSONS. OTHER THAN THE EXPRESS REPRESENTATIONS MADE BY DISTRICT IN SECTION 10.1, DEVELOPER HAS NOT RELIED AND WILL NOT RELY ON, AND DISTRICT IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY DISTRICT, ANY MANAGER OF THE PROPERTY, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT DISTRICT, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. DEVELOPER REPRESENTS TO DISTRICT THAT DEVELOPER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF DISTRICT OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. DEVELOPER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES THAT MAY NOT HAVE BEEN REVEALED BY DEVELOPER'S INVESTIGATIONS, AND DEVELOPER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED DISTRICT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH DEVELOPER MIGHT HAVE ASSERTED OR ALLEGED AGAINST DISTRICT AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT DEFECTS OR PHYSICAL CONDITIONS (EXCLUDING ANY DEFECTS IN THE PROPERTY WORK REQUIRED TO BE UNDERTAKEN AND COMPLETED BY THE DISTRICT HEREUNDER), VIOLATIONS OF ANY LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY; PROVIDED, HOWEVER, THAT THE

FOREGOING SHALL NOT SERVE TO RELIEVE DISTRICT FROM LIABILITY FOR A BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT. DEVELOPER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION OR REMOVAL OF MOLD, FUNGI, VIRAL OR OTHER BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED FROM AND AFTER THE CLOSING, OR EARLIER IF CAUSED BY DEVELOPER, SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF DEVELOPER.

6.9 Survival of Disclaimers. District and Developer agree that the provisions of Section 6.8 shall survive Closing forever.

6.10 Title.

6.10.1 Title Examination; Commitment for Title Insurance. During the Study Period Developer shall obtain from the Title Company, at Developer's expense, ALTA title insurance commitments (the "**Title Commitments**") covering portions of the Property, showing all matters affecting title thereto.

6.10.2 Survey. Developer is responsible for securing any and all surveys and engineering studies, at its sole cost and expense, as needed (i) for the Title Company to issue the title insurance policies required under this Agreement, (ii) to complete the Development Plan, (iii) to delineate the boundaries of each Development Site (including the creation of the legal descriptions to identify such areas), and (iv) as otherwise required to consummate the transactions contemplated by this Agreement and to develop the Project as described herein (collectively, the "**Surveys**"). Developer shall provide District with complete and accurate copies of all Surveys and shall cause the surveyor (or other Person preparing same) to include District and Title Company as parties to whom same are certified.

6.10.3 Permitted Exceptions. Title to the Property shall be investigated by Developer during the Study Period and in the event Developer does not terminate this Agreement as of the expiration of the Study Period, the status of title existing as of the date of Developer's Title Commitments shall be deemed acceptable. The Property shall be conveyed to Developer subject only to the following matters (the "**Permitted Exceptions**"):

(1) the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided;

(2) Laws (including, without limitation, all building and zoning laws, ordinances, codes and regulations), whether existing or proposed, now or hereafter in effect relating to the Property;

(3) items shown on the Surveys;

(4) encroachments, overlaps, boundary disputes, or other matters existing as of the effective date of this Agreement and shown on the Surveys or which could be discovered by an ordinary inspection of the Property;

(5) the terms and conditions of this Agreement and the Related Agreements (to the extent intended pursuant to the terms hereof to be recorded in the Land Records);

(6) the easements, licenses and other rights reserved or to be reserved by District at Closing pursuant to this Agreement and the Related Agreements and any other documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement;

(7) any easements, rights-of-way, exceptions, and other matters requested by Developer or District in writing, in each case subject to the approval of the non-requesting party, which approval shall not be unreasonably withheld, conditioned or delayed, and required in order to develop the Property in accordance with this Agreement (including those required to obtain necessary governmental approval of such development);

(8) all matters, whether or not of record, that arise out of the actions of Developer or Developer's Agents; and

(9) those matters set forth on Schedule 6.10.3.

6.11 Additional Title Matters.

6.11.1 Pre-Closing "Gap" Title Defects. Developer may, at or prior to Closing, notify District in writing of any objections (other than Permitted Exceptions) to title first raised by the Title Company or the surveyor between (a) the date which is the later of (1) the effective date of the applicable Title Commitment referred to above or (2) the Effective Date, and (b) the Closing Date. With respect to any objections to title set forth in such notice, District shall have the right, but not the obligation, to cure such objections, unless such objections are (i) monetary liens or encumbrances, or (ii) other encumbrances created by or at the direction of District, in either of which event District shall be obligated to cause the removal thereof at or prior to the Closing Date. Within ten (10) Business Days after receipt of Developer's notice of objections, District shall notify Developer in writing whether District elects to attempt to cure such objections. If District fails to timely give Developer such notice of election, then unless the same are matters which the District is obligated to cure as set forth above, District shall be deemed to have elected not to attempt to cure such matters. If District elects to attempt to cure such matters, District shall have until the Closing Date to attempt to remove, satisfy or cure the same, and District shall use reasonable efforts to attempt to remove, satisfy or cure such matters (but without any obligation to incur any cost or expense). For this purpose District shall be entitled to a reasonable adjournment of Closing if additional time is reasonably required, but in no event shall the adjournment exceed sixty (60) days after the Closing Date (but in no event later than the Outside Closing Date). If District elects not to cure any objections specified in Developer's notice, or if District is unable to effect a cure prior to Closing (or any date to which Closing has been adjourned), Developer shall have, within five (5) Business Days of notice thereof, the following options: (i) to accept a conveyance of, and develop in accordance with this Agreement, the Property subject to the Permitted Exceptions, specifically including any matter objected to by Developer which District is unwilling or unable to cure, or (ii) to terminate this Agreement by sending notice thereof to District, and upon delivery of such notice of termination,

this Agreement shall terminate and the Deposit shall be returned to Developer, and thereafter neither Party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If District is deemed to have elected not to cure, Developer shall, within five (5) Business Days notify District in writing whether Developer shall elect to accept conveyance under clause (i) or to terminate this Agreement under clause (ii). In the event Developer does not so timely notify District within such five (5) Business Day period, then Developer shall be deemed to have elected to terminate this Agreement under clause (ii) above.

6.11.2 District Actions. From and after the Effective Date, and so long as this Agreement is in full force and effect, District shall not enter into, grant, create or amend any easement, covenant or other encumbrance or other exception to title or other agreement restricting the use or development of the Property or portion thereof that would survive beyond the Closing Date, in each case without the approval of Developer, which approval shall not be unreasonably withheld, conditioned or delayed.

6.12 Title to be Conveyed. At Closing, District shall convey to Developer insurable (however District shall have no obligation to provide or obtain such insurance) and marketable title to the Property subject only to the terms of this Agreement, and otherwise subject only to the Permitted Exceptions.

6.13 Required Title Policies. At Closing, Developer shall obtain an ALTA extended coverage title insurance policy issued by the Title Company, in an amount designated by Developer and satisfactory to the Title Company, insuring that the estate in the Property is vested in Developer subject only to the Permitted Exceptions, and with such endorsements as may be reasonably requested by Developer, all at the sole cost and expense of Developer.

6.14 Risk of Loss. No casualty prior to Closing to all or any portion of the existing improvements on the Property shall excuse Developer from its obligation to proceed to Closing hereunder, but Developer shall have no obligation to rebuild or restore any such existing improvements.

6.15 Condemnation.

6.15.1 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 notice thereof.

6.15.2 Total Taking Prior to Closing. In the event of a taking of the entire Property prior to Closing, District shall release the Deposit to Developer, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder, District shall reimburse Developer for all third party costs, fees and expenses incurred in connection with the Property, including but not limited to engineering, architectural, legal and other fees and expenses and all other costs incurred in investigating, planning and preparing to acquire the Property, and District shall have the right to any and all condemnation proceeds.

6.15.3 Partial Taking Prior to Closing. In the event of a partial taking of any portion of the Property prior to Closing, Developer shall determine in good faith whether the

development of the Property remains physically and economically feasible. If the Developer reasonably determines that the development of the Property is no longer feasible, whether physically or economically, as a result of such condemnation, Developer shall provide notice thereof to District, this Agreement shall terminate, District shall release the Deposit to Developer, and the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein. In such event, District shall have the right to any and all condemnation proceeds. If the Developer determines that the development of the Property remains economically and physically feasible, then the Parties shall be deemed to have elected to proceed to Closing, and Developer shall have the right to any and all condemnation proceeds. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Developer has not provided District notice that it has determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Developer's election to terminate this Agreement.

ARTICLE 7 - CLOSING

7.1 Closing Date. Developer and District shall each diligently pursue performance of all covenants hereof and satisfaction of all conditions precedent to Closing required to be performed by it hereunder. The consummation of the transfer of the Property to Developer as contemplated herein ("**Closing**") shall be held on at such place in the City of Washington, DC as mutually agreed by the Parties, on a date designated by the Parties (the "**Closing Date**"). Notwithstanding any provisions in this Agreement to the contrary, in no event shall Closing be held later than the date stated as the "**Outside Closing Date**" in the Schedule of Performance, time being of the essence but in all events subject to events of Force Majeure.

7.2 Closing Phases. It is contemplated by this Agreement that District will convey the Phase 1 Property and Phase 2 Property in two (2) Closings. Accordingly, the deliveries at Closing, set forth below, shall refer to all required documents and other deliveries for the applicable Project Phase. As contemplated in the Schedule of Performance, it is anticipated that the Closing for the Phase 1 Property will occur within three (3) months of the District's completion of the Horizontal Development applicable to the Phase 1 and the Outside Closing Date for the Phase 2 Property be forty-eight months (48) after the Effective Date, but in no event shall the Outside Closing Date extend beyond the expiration of the Resolution and Extension Resolution.

7.3 Deliveries at Closing.

7.3.1 District's Deliveries. At Closing, subject to the terms and conditions of this Agreement, District shall, with respect to the Project Phase then being sold and transferred, execute, notarize and deliver, as applicable, to Settlement Agent:

(1) the Special Warranty Deed;

(2) the Construction Covenant;

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

(4) subject to the terms of Section 9.3, evidence of completion of the Finished Pad(s) applicable to that Project Phase;

(5) any and all other deliveries required from District on the date of Closing under this Agreement or the Related Agreements 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; provided, however that District shall not be required to deliver a "gap" indemnity or any other indemnity to the Title Company or any other Person;

(6) evidence of completion of the Public Amenities applicable to that Project Phase described on Schedule 9.4;

(7) evidence of completion of the Public Infrastructure applicable to that Project Phase described on Schedule 9.5; and

(8) the Affordable Housing Covenant.

7.3.2 Developer's Deliveries. At Closing, subject to the terms and conditions of this Agreement, Developer shall, with respect to the Project Phase then being sold and transferred, execute, notarize and deliver, as applicable, to Settlement Agent:

(1) the Affordable Housing Covenant

(2) the Construction Covenant;

(3) the Financing Documents;

(4) the Vertical Development Completion Guaranty fully executed by one or more Approved Guarantors and effective as of Closing;

(5) evidence of completion of the Pre-Vertical Development Work;

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

(7) copies of all submissions and applications for Material Permits, certified by Developer to be true, accurate and complete;

(8) copies of all Permits then received by Developer (with remaining Permits to be delivered to the District as received subsequent to Closing);

(9) a certified fully executed copy of any amendments to the CBE Agreement entered into prior to Closing;

(10) a certified fully executed copy of any amendments to the First Source Agreement entered into prior to Closing;

(11) satisfactory evidence of insurance policies in the amounts, and with such insurance companies, as required by the Construction Covenant;

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

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

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

(c) a certificate executed by the Developer stating that there has been no material adverse change in the financial statements of Developer delivered to District as of the Effective Date;

(d) if requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in, and is authorized to do business in, District, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound;

(13) with respect to each Approved Guarantor delivering a Guaranty required to be delivered pursuant to this Section 7.3.2, any Guarantor Submissions of such Approved Guarantor that may be reasonably requested by District, and, for any such Approved Guarantor that is not a natural person, the following documents evidencing the due organization and authority of such Approved Guarantor to enter into, join and consummate the applicable Guaranty and the transactions contemplated therein:

(a) the organizational documents and a current certificate of good standing issued by the state of formation of such Approved Guarantor;

(b) authorizing resolutions, in form and content satisfactory to District, demonstrating the authority of the Approved Guarantor and of the Person executing such Guaranty on behalf of such Approved Guarantor;

(c) if requested by District, an opinion of counsel that such Approved Guarantor is validly organized, existing and in good standing in its state of formation, that such Approved Guarantor has the full authority and legal right to carry out the terms of the applicable Guaranty, that such Approved Guarantor has taken all actions to authorize the execution, delivery, and performance of such Approved Guaranty, that none of

the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of such Approved Guarantor or any contract or agreement to which such Approved Guarantor is a party or by which it is bound; and

(14) any and all other deliveries required from Developer on the date of Closing under this Agreement or the Related Agreements 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.

7.4 Recordation of Closing Documents and Closing Costs.

7.4.1 Recordation. Contemporaneously with Closing for each Project Phase, Developer shall cause Settlement Agent to file for recordation among the Land Records, at no cost to District:

(1) the Special Warranty Deed;

(2) the Affordable Housing Covenant;

(3) the Construction Covenant;

(4) the Financing Documents, to the extent same are required to be recorded pursuant to the terms thereof; and

(5) any documents required to be recorded at or prior to Closing pursuant to the terms of the Related Agreements.

7.4.2 Costs. At Closing, Developer shall pay all of the following costs: (1) the title searches; (2) title insurance premiums and endorsement charges for title insurance purchased by Developer or its lenders; (3) any survey costs; (4) as applicable, District Real Estate Deed Recordation Tax on the Special Warranty Deeds; (5) as applicable, costs of recording of the documents specified in Section 7.4.1; (6) all Settlement Agent's fees; and (7) all other usual closing costs customarily appearing on a settlement statement.

7.5 Apportionment of Taxes. Any real property taxes or assessments which have been paid or are payable on the Development Site(s) shall be apportioned between District and Developer as of the Closing so that Developer shall bear that portion of such charges which accrue on and after Closing. If the amount of the current taxes on the Development Site(s) is not ascertainable on the date of Closing, the apportionment between District and Developer shall be based on the amount of the most recently ascertainable taxes (provided that the valuation therefore for which Developer is obligated shall be not more than the applicable Purchase Price), but such apportionment shall be subject to final adjustment within thirty (30) days after the date the actual amount of such current taxes is ascertained. Notwithstanding the foregoing, the Parties hereby understand and acknowledge that District is exempt from the payment of real property taxes pursuant to the laws of the District and that District is therefore exempt from any obligations hereunder of District to pay real property taxes or assessments.

7.6 Apportionment of Other Costs and Expenses. All utilities, maintenance charges and other operating expenses incurred in connection with the ownership, management and operation of the Development Site(s) shall be paid or shall be apportioned between District and Developer so that Developer shall bear that portion of such charges which accrue on and after the date of Closing and District (or other Person that may be liable therefor) shall bear that portion of such charges which accrue before such date of Closing.

ARTICLE 8 - SUBMISSIONS

8.1 Plans, Drawings and Specifications.

8.1.1 Development Plan. No later than the date provided in the Schedule of Performance, Developer shall submit to District a proposed plan for the Project, which plan shall include the proposed design and detailed plans for developing each Project Phase (the "**Development Plan**"). The Development Plan shall be created based upon a refinement of the Concept Plans as a result of the Zoning Approvals process. In addition, the Development Plan must be consistent with this Agreement (including, without limitation, the obligations set forth in Article 9 and the applicable provisions of the Related Agreements). The Development Plan shall be subject to District's review and approval, which approval shall be in District's sole and absolute discretion, provided, however, that the Review Period for District's review of the Development Plan shall not commence until Developer shall have provided District with notice that each of the components of the Development Plan have been submitted to District for District's approval. The Development Plan shall include the following components:

(1) Construction Plans and Specifications showing the following:

(a) the location and GFA of each Building to be constructed;

(b) building height and massing;

(c) the amount and location of parking facilities;

(d) the plan for access and egress of vehicular, bike and pedestrian access and egress to and from the Property and to and from each Development Site; and

(e) the Related Improvements.

(2) the design guidelines for the Project with an acceptable level of detail for each Building;

(3) the plan for addressing any requirements of the Historic Preservation Review Board of the District of Columbia, or the Mayor's agent pursuant thereto;

(4) Developer's Construction Schedule, which must be consistent with the outside dates set forth on the Schedule of Performance;

(5) Developer's plan for managing the Project;

(6) The Final Project Funding and Financing Plan as required by Section 5.1;

(7) the Interim Project Budget as required by Section 5.2.2; and

(8) the Affordable Unit Index.

In addition to the foregoing items, Developer shall provide to District such other items as may be reasonably requested by District to facilitate its review and approval of (and comments on) the Development Plan. The Development Plan approved by the District pursuant to Section 8.3 shall be the "**Final Development Plan**".

8.1.2 Permit Applications; Final Permits.

(a) Within five (5) Business Days following Developer's (i) submission of any final application for any Material Permit to the applicable Governmental Authority, and (ii) receipt of any Material Permit issued by any Governmental Authority, Developer shall deliver a copy of such final application or Material Permit to District. Upon District's reasonable request, Developer shall provide District with copies of all Permits that are not Material Permits.

(b) Prior to Commencement of Construction for a Project Phase, Developer shall submit to District for informational purposes only a copy of the Permits required for Commencement of Construction for such Project Phase.

8.1.3 Funding Commitments. Prior to Commencement of Construction for a Project Phase, Developer shall provide to District bona fide commitment(s) for the: (i) funding from an Institutional Lender of the Project Costs of such Project Phase and payment of interest during the construction period (pursuant to the Final Project Budget); and (ii) equity funding to cover the difference between the funding provided under clause (i) above and the Final Project Budget, if any. The commitment described in clause (i) above is referred to herein collectively as the "**Loan Commitment**". The commitment described in clause (ii) hereof is referred to herein as the "**Equity Commitment**". The Loan Commitment and Equity Commitment must demonstrate that Developer has adequate funds or will have adequate funds upon the funding of the Loan Commitment and Equity Commitment to complete the Project Phase to which such Loan Commitment and Equity Commitment pertain, and that such funds are committed to the Project Costs of such Project Phase as set forth in the Final Project Budget. Such Loan Commitment and Equity Commitment shall not contain any provisions requiring acts of Developer prohibited herein or in the Related Agreements or prohibiting acts of Developer required herein or in the Related Agreements, and shall be certified by Developer to be true, correct and complete copies thereof. The Loan Commitment and Equity Commitment shall be subject only to reasonable market standard conditions to funding. Developer shall endeavor in good faith to timely perform any and all conditions to funding of the Loan Commitment and Equity Commitment in accordance with their terms. The Institutional Lender under such Loan Commitment shall be referred to in this Agreement as an "**Approved Mortgagee**" and such mortgage shall be referred to in this Agreement as an "**Approved Mortgage.**"

8.1.4 Loan Documents. Prior to Commencement of Construction of a Project Phase, Developer shall provide to District, (i) the proposed loan documents evidencing Developer's

construction financing in accordance with the Loan Commitments for such Project Phase, which must satisfy the requirements for financing set forth in the Construction Covenant, (ii) the proposed agreements evidencing the equity funding in accordance with the Equity Commitment for such Project Phase, and (iii) a statement detailing the disbursement of the proceeds of Developer's proposed financing and funding. The documents described in the foregoing sentence shall be collectively referred to herein as the "**Financing Documents**."

8.1.5 Professionals; Contracts with Professionals; Other Contracts.

(a) Developer shall not knowingly retain, hire or maintain the retention of any Prohibited Person as a design consultant, contractor or other consultant in connection with the Project. Upon District's reasonable request, Developer shall provide to District the contracts or proposed contracts with the Architect, Contractor(s), subcontractors, landscape architects, master planners, designers, engineers (including, without limitation, design, marine and infrastructure engineers) or traffic consultants for the Project or any portion thereof not otherwise required to be provided to District pursuant to the foregoing provisions of this section.

(b) Any Person that Developer proposes for any of the following shall be subject to District's approval, which approval shall be in accordance with Section 8.3: (i) all community outreach consultants retained in connection with any Property Work or Public Infrastructure work undertaken by Developer for and in the place of the District hereunder; and (ii) any replacement of any of the foregoing. Each such Submission to District shall include such information regarding the experience and technical qualifications as may be reasonably requested by District to enable District to evaluate such Person. No Prohibited Person shall be engaged by Developer to perform any service or provide any goods and materials or perform any work with respect to the Project.

8.1.6 Construction Schedule. Developer shall provide a schedule for construction of the Project (the "**Construction Schedule**"). The Construction Schedule shall be submitted to District along with Developer's Development Plan Submission pursuant to Section 8.1.1. With each submission to District of an amended Interim Project Budget pursuant to Section 5.2.2, and with each submission of an updated Final Project Budget (or certification that there have been no changes to the Final Project Budget) pursuant to Section 5.2.3, Developer shall submit to District an updated Construction Schedule.

8.1.7 Press Releases Marketing, Signage and Promotional Materials.

(1) The District (without cost to the District) shall be identified where the Developer's name ("**DEVELOPER**" or other like or derivative nomenclature identifying the "master developer" of the McMillan Site) or logo is used on construction signage installed by Developer at the Property. District shall have the right to approve all copies of above described signs which use the District's name, logo, or like identifiers, which shall be a Submission for purposes of Section 8.3 and subject to the District's Review Period. Expressly excluded from this provision are publications or marketing materials specifically designed by Developer to recruit prospective lessees, tenants, buyers, investors, lenders, and/or financial institutions.

(2) Subject to the other provisions of this Section 8.1.7, Final Development Plan,

Zoning Approvals and Laws, Developer shall have discretion over signage, advertising, sponsorship, branding and marketing of the Project, including, but not limited to, tenant identification, promotion of the Project and similar activities (whether revenue producing or otherwise). Prior to Closing, Developer shall have the right to install customary signage at the Property in a location, size and content acceptable to District in its sole but reasonable discretion, subject to Section 6.3.1. All signage installed by Developer shall be installed, maintained and updated from time to time at the sole cost and expense of Developer or as otherwise provided in the Related Agreements. In addition to Property signage, District shall reasonably cooperate with Developer, at no cost or expense to District, to assist Developer in securing such signage rights as may be available off the Property to enhance the identification, direction, nature and extent of the Project.

(3) District shall not acquire any right or interest in proprietary materials or intellectual property owned or used by Developer or Developer's Project professionals or Project contractors, including but not limited to trademarks and trade names.

(4) Developer shall use good faith efforts to coordinate with District all press releases concerning the McMillan Site prepared by Developer. District shall timely respond to any request from Developer for approval of any such press release(s) and in no event shall any press releases requiring District's approval be made unless such approval has been obtained.

8.2 Timing of Submissions. Each Submission shall be made by Developer to District at the time (if any) specified for such Submission in this Agreement or by the date set forth on the Schedule of Performance.

8.3 Scope of District Review and Approval of Developer's Submissions. Each Submission (and each component of a Submission) requiring District's approval shall be reviewed and approved by District in accordance with the procedures set forth in this Section 8.3.

8.3.1 District Review Period. District shall complete its review of the applicable Submission within fifteen (15) Business Days of receipt of a Submission unless otherwise stated in this Agreement (the "**Review Period**") and, within such Review Period, notify Developer in writing (the "**Submission Approval/Disapproval Notice**") as to whether the District approves or disapproves of such submission; provided, however, that in the event the District disapproves any Submission, it shall set forth in its disapproval notice the reasons for such disapproval, as well as specific details of any proposed changes reasonably requested by the District. With respect to the Development Plan, the Review Period shall commence following District's receipt of all components of the Development Plan (i.e., each of the items listed in Section 8.1.1). With respect to any other Submission containing multiple components, or if a Submission is dependent upon the approval of another Submission (e.g., if the review of a Permit application is dependent upon the approval of Construction Plans and Specifications), District may disapprove such Submission if all such components have not been received or such other Submissions have not been previously approved.

8.3.2 Approvals in Writing. Except as provided in the following sentence, all approvals required pursuant to Article 8 or elsewhere in this Agreement must be in writing

(which may for such purposes include electronic delivery via facsimile or e-mail).

8.3.3 Second Notice/Deemed Approval. Notwithstanding anything the contrary contained herein, in the event (x) District fails to provide Developer with a Submission Approval/Disapproval Notice prior to expiration of the applicable Review Period and (y) Developer desires to pursue deemed approval of the applicable Submission pursuant to this Section 8.3.3, the Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of the District to issue a Submission Approval/Disapproval Notice within 10 Business Days of the District's receipt of the Second Notice shall constitute and shall be deemed to be District approval of the applicable Submission, except that under no circumstances shall Developer's Submissions under Sections 8.1.1(5) and 8.1.1(8) be deemed approved by the District pursuant to the provisions described in this Section 8.3.3, it being acknowledged that written approval from the District shall be required for Submissions under Sections 8.1.1(5) and 8.1.1(8). Notwithstanding the above, any Construction Schedule submitted by Developer, which is not consistent with the Schedule of Performance shall be deemed disapproved in the event the District fails to timely issue a Submission Approval/Disapproval Notice following its receipt of a Second Notice. Further notwithstanding the foregoing or anything to the contrary contained herein, in the event the District fails to respond to Developer's Submissions under Section 8.1.1(5) and/or 8.1.1(8) within 10 Business Days after its receipt of a Second Notice, the then-remaining dates set forth in the Construction Schedule and Schedule of Performance shall be extended on a day-for-day basis for any delay in the Project caused thereby.

8.3.4 No Representation. District's review and approval of any Submission (including, without limitation, the Construction Plans and Specifications) and any changes thereto is not and shall not be construed as a representation or other assurance that such Submission complies with the Zoning Approvals or any building codes, regulations or standards, including, without limitation, building, engineering and structural design, or any other Laws. District shall incur no liability by reason of its review of any Submissions and is reviewing such Submissions solely for the purpose of protecting its own interests under this Agreement.

8.4 Changes to Approved Submissions. No Material Change to any approved Submission may be made without District's prior approval, which approval shall not be unreasonably withheld or conditioned.

8.5 Government Required Changes. Notwithstanding any other provision of this Agreement, District acknowledges and agrees that District shall not withhold its approval of any elements of a proposed Submission or proposed changes to a Submission which are required by any Governmental Authority (but not changes to other Submissions that are ancillary to such required changes); provided however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of or change to a Submission with the Governmental Authority requiring such element or change and with the Architect, and (ii) the Architect shall have reasonably cooperated with District and such Governmental Authority in seeking such reasonable modifications of the required element or change as District shall reasonably deem necessary or desirable. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes shall be made as soon as reasonably possible

and in no event later than the applicable Review Period for such Submission. Developer shall promptly notify District in writing of any changes to a Submission required by a Governmental Authority whether before or during construction.

8.6 Progress Meetings/Consultation. During the preparation of the Submissions described in this Article 8, District's staff and Developer shall hold no less than quarterly progress meetings as appropriate considering the progress of such Submissions, to coordinate the preparation of, submission to, and review of such Submissions by District. With respect to all Submissions and revisions of Submissions, District's staff and Developer shall communicate and consult informally as frequently as is necessary so as to assist in Developer's preparation of, and District's review of, the formal submittal of such Submissions or revisions of Submissions to District.

ARTICLE 9 - DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF PROJECT

9.1 District's Obligations. Subject at all times to Section 17.19 of this Agreement, District is responsible for the Property Work, the Public Infrastructure, and the Public Amenities in accordance with this Agreement, the Final Development Plan, the Zoning Approvals and all Laws (collectively, the "**Horizontal Development**"). Except as set forth in Sections 6.4(a) and 9.3, all Horizontal Development described herein shall be completed prior to the Closing for the applicable Project Phase.

9.2 Property Work. All of the work and services listed on Schedule 9.2, which are necessary to permit and prepare a Development Site for the construction of a Building shall be known as the "**Property Work**". Completion of the Property Work shall render each Development Site a "**Finished Pad**".

9.3 Property Work Funds. Notwithstanding Section 9.1 above, if and to the extent that any Property Work described herein for any applicable Project Phase shall not be completed prior to the Closing for such Project Phase and Developer elects to proceed to Closing pursuant to Section 6.4(a), Developer shall deposit the Purchase Price into an account with the Title Company, which the Title Company shall hold in escrow and disburse (together with any other funds previously delivered to Title Company pursuant to this Agreement, and/or any Horizontal Development Funds delivered to Title Company pursuant to any Additional LDAs (collectively the "**Horizontal Development Funds**")) pursuant to the Escrow Agreement attached hereto as Exhibit J.

9.4 Public Infrastructure. District shall develop and construct all public infrastructure and public improvements on the Property, including all public streets, alleys, sidewalks, bike paths, curbs, related utilities and all Property Work necessary for the construction of the foregoing (collectively, the "**Public Infrastructure**"). The Public Infrastructure shall include the items listed on Schedule 9.4 attached hereto.

9.5 Public Amenities. District shall develop and construct parks, and other public spaces and amenities, including all promenades, parks, related utilities and landscaping, community spaces

or other community amenities and/or cultural resources and all Property Work necessary for the construction of the foregoing (collectively, the "**Public Amenities**"). The Public Amenities shall include the items listed on Schedule 9.5 attached hereto. The District's responsibility to construct and maintain the Public Amenities shall not extend onto any part of the Development Sites.

9.6 Developer's Obligations.

9.6.1 Developer's Obligation Generally. As additional consideration for District conveying the Property to Developer, Developer hereby agrees to develop and construct the Project, and use, maintain and operate the Property (including the improvements to be constructed on the Property), in accordance with the Final Development Plan, the final Construction Plans and Specifications, this Agreement, the Related Agreements, as applicable, the Zoning Approvals and Laws and in a diligent manner in accordance with prevailing industry standards. The cost of developing and constructing the Project shall be borne solely by Developer. Any Transfer shall be subject to the terms of Article 13.

9.6.2 District Cooperation. District shall reasonably cooperate with Developer as reasonably necessary, and to the extent permitted by Laws, from time to time in connection with Developer's pursuit of the Permits for the Project, including by executing applications and providing such documentation in District's possession necessary to obtain the Permits. The District shall appoint a single officer or other individual to act as its day-to-day single point of communication for all matters arising with respect to the administration of this Agreement, which such officer or other individual shall be responsible for coordinating the fulfillment of District's obligations hereunder (e.g., arranging for District's approval of Submissions and other matters required to be approved by District herein), and Developer may direct its inquiries and other matters regarding District's responsibilities and rights under this Agreement to such appointed officer or other individual. The District may change any such appointed officer or other individual from time to time and District shall give prompt notice of any such change to Developer.

9.6.3 Affordable Housing. Developer shall satisfy the requirements set forth in the Affordable Housing Covenants, including, without limitation, the development, construction, and sale of the ADUs required to be constructed pursuant to the Affordable Housing Covenants, which must at least satisfy the Affordable Housing Minimum.

9.6.4 Management Entity. Developer will create a management entity (e.g. a common area association) to maintain, manage, operate, repair and replace the Public Infrastructure, Public Amenities and other portions of the McMillan Site subject to public access easements, at the sole cost and expense of such management entity. Developer and each tenant, subtenant, owner or other occupant of any portion of the McMillan Site (including, without limitation, any owner's association established with respect to the Property, the members of which will initially be the Developer, and as Residential Units and any appurtenances are subsequently conveyed, the owners thereof) shall be required to contribute to such management entity pursuant to the terms and conditions contained in such entity's governing documents; provided, however, in no event shall an owner of a Residential Unit be required to make any such contribution directly (it

being acknowledged that any contribution by a Residential Unit owner shall be through an owner's association or similar management entity of which it is a member by virtue of its Residential Unit ownership).

9.7 Parking. At a minimum, the parking on the Property shall include all parking required to meet the Zoning Approvals for the uses developed within the Property.

9.8 Sustainable Development. Developer shall design, develop and construct the Project and all portions thereof in a manner that is environmentally sustainable and in compliance with the applicable provisions of the Green Building Act of 2006, D.C. Official Code §§ 6-1451.01 *et seq.*, as amended, and the regulations promulgated thereunder (the "**Green Building Act**").

9.9 Period of Construction. The Project shall be constructed within the times set forth on the Schedule of Performance. In no event shall Developer achieve Commencement of Construction on a Project Phase later than thirty (30) days after the Closing Date and Developer shall thereafter diligently pursue completion of the Project in accordance with the Schedule of Performance, such that Developer shall achieve Completion of Construction by the outside date set forth on the Schedule of Performance.

9.10 Inspection of Site. After Closing, District reserves for itself and its employees and agents the right to enter the Property from time to time upon reasonable prior notice to Developer, which notice shall include, where applicable, District's intent to cure any existing default that remains uncured after applicable notice and cure periods for the purpose of (i) performing inspections in connection with the development and construction of the Project, including the conformance of the Project to the Final Development Plan, (ii) curing any default of such Person that remains uncured after applicable notice and cure periods as set forth in Article 15. Developer waives any claim that it may have against District arising out of entry upon the Property for the purposes set forth in (i) and (ii) above, resulting from causes other than negligence or willful misconduct of District, its employees or agents. Any inspection of the Project or access to the Property by District hereunder shall not be deemed an approval, warranty or other certification as to the compliance of the Project with any Permits, building codes, regulations or standards, or other Laws.

9.11 Construction Manager. District shall have the right to utilize a construction manager or other consultants of District's choosing at District's sole cost, risk and expense, to assist District in the review of the Submissions and inspection of the development and construction of the Project and all components thereof, and Developer shall reasonably cooperate with such construction manager and other consultants at no out-of-pocket expense or obligation or liability to such Person.

9.12 Pre-Construction Use and Condition. After Closing, Developer may use the Property for any purpose directly related to the construction, marketing or sale of the Project including, staging areas, temporary facilities for the construction of the Project, and temporary parking facilities.

9.13 Developer's Obligation to Obtain Permits. Developer shall have the sole responsibility, at Developer's sole cost and expense, but with District's cooperation to the extent

set forth in this Agreement, for obtaining all Permits related to the Project and shall make application therefor directly to the applicable Governmental Authority. Prior to Closing, District shall, upon request by Developer, execute applications for Permits, as fee owner of the Property, to the extent required by the applicable Governmental Authority, at no cost, expense, obligation or liability to District. District shall execute any such application at the time District approves such application pursuant to Section 8.3, provided that Developer indicates in its request for approval of such application that District's execution thereof is a requirement of the applicable Governmental Authority. In no event shall Developer commence development, construction or renovation of all or any portion of the Property until Developer shall have obtained all Permits required for such work. Developer shall submit its application for Permits to the applicable Governmental Authority within a period of time that Developer reasonably believes in good faith is sufficient to allow issuance of such Permits prior to the date necessary to avoid the delay of the Commencement of Construction for a Project Phase) (including, if applicable, sufficient time to permit District's review and approval of such application in accordance with the applicable provisions of Section 8.3). From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt of the Permit.

9.14 Retention of Plans, Working Drawings, Specifications. Promptly upon Completion of Construction of a Project Phase, Developer shall deliver to District, at Developer's sole cost and expense, a complete, electronic set of "as-built" drawings (including all field notations and corrections) for such Project Phase. For a period of no less than three (3) years from the date of the Completion of Construction of the applicable Project Phase, Developer shall retain in its records a copy of all design materials with regard to the Project Phase, including plans, working drawings, and contract specifications prepared by (or for) Developer, or prepared for or used as a basis for, the submission of the final Construction Plans and Specifications to District or otherwise used by Developer for the development and construction of the Project. Copies of such materials shall be available to District upon its request during such period.

9.15 Joining in Petitions. Upon reasonable request of Developer from time to time, District shall subscribe to, and join with, Developer, as applicable, to the extent necessary, in any petition or proceeding required (i) for the closing, vacating, dedication, and/or change of grade of any street, alley or other public right-of-way within or fronting or abutting on, or adjacent to, the Property in connection with the Project, and (ii) any rezoning and Permits necessary for the development and construction of the Project as contemplated by this Agreement and the Final Development Plan, and shall execute any necessary waiver or other document in respect to the foregoing; provided however, that (a) Developer shall consult in good faith with District regarding the appropriateness of any and all such actions prior to undertaking same, and (b) such closing or vacating of any street, alley or other public right-of-way shall cause the least disruption to adjoining property owners and the Final Development Plan as possible.

ARTICLE 10 - REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of District. District hereby represents and warrants to Developer as follows:

10.1.1 Execution, Delivery and Performance. District (i) has all requisite right, power and authority to execute and deliver this Agreement and to perform its obligations thereunder

and under the Related Agreements to be signed by District at Closing and (ii) subject to the provisions of Section 17.19, has taken all necessary action to authorize the execution, delivery and performance of this Agreement. District has the authority to convey the Property to Developer as provided in this Agreement. This Agreement has been duly executed and delivered by District, and constitutes the legal, valid and binding obligation of District, enforceable against it in accordance with its terms. The Person signing this Agreement on behalf of District is authorized to do so.

10.1.2 No Violation. The execution, delivery and performance by District of this Agreement and the transactions contemplated hereby and the performance by District of its obligations hereunder will not violate any of the terms, conditions or provisions of (i) any judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority, or Law to which District is subject or (ii) any agreement or contract to which District is a party or to which it is subject.

10.1.3 No Consent. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by District.

10.1.4 No Brokers. District has not dealt with any agent, broker or other similar Person in connection with the transfer of the interests in the Property.

10.1.5 Litigation. There is no litigation, arbitration, administrative proceeding or other similar proceeding pending against District which relates to the Property, this Agreement, or any of the Related Agreements.

10.1.6 Leases. To District's actual knowledge, there are no leases with respect to the Property between District and any other Person.

10.2 Representations and Warranties of Developer. Developer hereby covenants, represents and warrants to District as follows:

10.2.1 Due Formation. Developer is a limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the District to conduct the business in which it is now engaged.

10.2.2 Organization and Members. Attached as Schedule 10.2.2 is a true, accurate and complete organizational structure chart of Developer, including all Members and their respective ownership interests in Developer.

10.2.3 Power and Authority. Developer has the full right, power and authority to acquire its interests in the Property as provided in this Agreement and to carry out Developer's obligations hereunder and under all Related Agreements, and all requisite action necessary to authorize Developer to enter into this Agreement and to carry out its obligations hereunder have been taken. The person signing this Agreement on behalf of Developer is authorized to do so.

10.2.4 No Consents. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection

with the execution, delivery and performance of this Agreement by Developer.

10.2.5 Execution, Delivery and Performance. The execution, delivery, and performance of this Agreement by Developer and the transactions contemplated hereby and the performance by Developer of its obligations hereunder 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 Law to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject. This Agreement has been duly executed and delivered by Developer, and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

10.2.6 No Brokers. Developer has not dealt with any agent or broker in connection with the transfer of interests in the Property to Developer as provided herein.

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

10.2.8 No Speculation. The purchase of the Property by Developer, and Developer's other undertakings pursuant to this Agreement are and will be used for the purpose of developing the Project, and not for speculation in land holding or any other purpose.

10.2.9 No Bankruptcy. 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.

10.2.10 Financial Statements. The financial statements of Developer submitted to District are complete and accurate as of the dates thereof. There has been no material adverse change in the financial condition of Developer since the date of such financial statements.

10.2.11 No Tax Exemption. In no event shall Developer, or any of its employees, Contractors, Architect, subcontractors, agents, servants, beneficial owner of Developer, or any Member, partner, or principal of any beneficial owner of Developer assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to District, if any, on the basis of the District's involvement in the transaction contemplated by this Agreement.

10.2.12 Anti-Money Laundering; Anti-Terrorism.

(a) Neither Developer nor any of its Members or Affiliates have engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering laws, regulations or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. §§ 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. §§ 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control, (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, (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. §§ 1 et seq. or the International Emergency Economics Powers Act, 50 U.S.C. §§ 1701 et seq., or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time.

(b) Neither Developer nor any of its Members or Affiliates (a) are conducting any business or engaging in any transaction with any Person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or are named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) are a Person described in Section 1 of the Anti-Terrorism Order (a "**Restricted Person**").

10.3 Restatement. The representations and warranties of District and Developer set forth in Section 10.1 and Section 10.2 are true as of the Effective Date and, as a condition to Closing, shall be updated and restated as of Closing. Developer and District shall disclose in writing to the other any change to their respective representations and warranties set forth in Section 10.1 and Section 10.2 promptly after the Party giving such representation and warranty becomes aware thereof.

ARTICLE 11 - CONDITIONS TO CLOSING

11.1 Conditions Precedent to Developer's Obligation to Close. The obligations of Developer to purchase the Property and develop the Project (or the applicable portion or Project Phase) shall be subject to the following conditions precedent:

(a) District Performance. District shall have performed all material obligations hereunder required to be performed by District on or prior to the Closing Date for the applicable Project Phase.

(b) Representations and Warranties. The representations and warranties made by District in Section 10.1 of this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date.

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

(d) Title. Insurable and marketable title to the Property shall be vested of record and in fact in District and subject only to the Permitted Exceptions.

(e) Delivery and Performance. District shall have delivered (or caused to be delivered) all of the items required to be delivered to Developer pursuant to the terms of this

Agreement, including those provided for in Section 7.3.1, and District shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by District as of the date of Closing for the applicable Project Phase.

(f) Finished Pads. Subject to the provisions of Sections 6.4(a) and 9.3, District shall have completed all of the Property Work necessary to deliver the Finished Pad(s) for the applicable Project Phase.

(g) No Injunctions. There shall exist no order of any court that is binding upon Developer or District that prohibits Developer or District from consummating Closing under this Agreement or the performance of such party's respective obligations under this Agreement or any of the Related Agreements.

11.2 Conditions Precedent to District's Obligations to Close. The obligations of District to convey the Property (or the portion applicable to a Project Phase) shall be subject to the following conditions precedent:

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

(b) Representations and Warranties. The representations and warranties made by Developer in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date.

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

(d) Development Plan. The Development Plan for the Project shall have been provided by Developer to District, and approved by District in accordance with Section 8.3.

(e) Construction Plans and Specifications. Developer shall have provided to District, and District shall have approved all Construction Plans and Specifications in accordance with Section 8.3.

(f) Funding and Financing Plan. The Project Funding and Financing Plan shall have been provided by Developer to District and District shall have approved such Project Funding and Financing Plan in accordance with Section 5.1.

(g) Final Project Budget. District shall have approved such Final Project Budget in accordance with Section 5.2.5.

(h) Loan Commitments, Financing Commitments and Financing Documents.

(1) The Loan Commitments and the Equity Commitments for the financing to construct the Project Phase shall have been provided by Developer to District, and District shall have approved such Loan Commitments and Financing Commitments and same shall be in full force and effect.

(2) The final Financing Documents for the financing necessary to construct the Project Phase shall have been provided by Developer to District, and District shall have approved such final Financing Documents.

(3) All conditions to initial funding under the Loan Commitments and Financing Documents for the Development Site(s) being conveyed shall have been fully satisfied, and there shall be no default, or event which with the passage of time or giving of notice or both would become a default, by any party under the Loan Commitments or Financing Documents.

(i) Commencement. Developer shall be ready, willing and able to acquire the Property and to Commence Construction by the date set forth on the Schedule of Performance.

(j) Certificates of Insurance. Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer pursuant to this Agreement and the Construction Covenant.

(k) Evidence of Authority. Developer shall have provided satisfactory evidence of its authority to purchase the Property and to perform its obligations under this Agreement.

(l) Related Agreements. Each of the Related Agreements shall have been fully executed and delivered by all parties thereto, all conditions to Closing set forth in the Related Agreements shall have been satisfied in all material respects, and Developer and such other parties shall each have performed all of their material obligations required to be performed at or before the Closing (if any) under the Related Agreements.

(m) No Defaults. There shall be no existing Event of Default of Developer under this Agreement or any Related Agreement.

(n) Delivery and Performance. Developer shall have delivered (or caused to be delivered) all of the items required to be delivered to District at or prior to Closing pursuant to the terms of this Agreement, including, those provided for in Section 7.3.2.

(o) Approved Guarantors. Each of the representations and warranties of each Approved Guarantor providing any of the guaranties referred to in Section 7.3.2 set forth in such guaranties shall be true and correct in all material respects on and as of the Closing Date and there shall be no default, or event with notice or the passage of time, or both, would constitute a default by any Approved Guarantor under any of such guaranties.

(p) Financial Condition. There shall have occurred no material adverse change in the financial condition of Developer and the condition to Closing with respect to the Approved Guarantor as set forth in Section 4.2.4 has been satisfied.

(o) No Injunctions. There shall exist no order of any court that is binding upon Developer or District that prohibits Developer or District from consummating Closing under this Agreement or the performance of such Party's respective obligations under this Agreement or any of the Related Agreements.

(q) Submissions. Developer shall have submitted all Submissions required to be provided to District as of Closing pursuant to Article 8.

(r) Sale of Phase 1 Property Residential Units. With respect to the District's obligation to convey the Phase 2 Property, Developer shall have delivered to the District a written certification from Developer, together with reasonable supporting documentation, that Developer has entered into contracts for the sale, at arm's-length, of not less than forty-five percent (45%) of the aggregate number of Residential Units to be constructed on the Phase 1 Property.

(s) Pre-Vertical Development Work. Developer shall have completed the Pre-Vertical Development Work and provided evidence of the same.

11.3 Failure of a Condition.

11.3.1 Failure of a Condition to Developer's Obligation to Close. If all of the conditions to Closing set forth above in Section 11.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to diligently pursue the satisfaction of such conditions or to perform any obligation of Developer hereunder, Developer shall have the option, at its sole discretion, to: (i) waive any such condition set forth in Section 11.1 and proceed to Closing hereunder without a reduction of either Party's obligations hereunder and subject to the provisions of Sections 6.4(a) and 9.3; (ii) terminate this Agreement by notice to District given on or before the Closing Date, whereby District will release the Deposit and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement and without waiving any breach by either Party occurring prior to termination; or (iii) extend the Closing Date to permit District to satisfy any unsatisfied condition(s) to Closing set forth in Section 11.1, but in no event shall such extension be in excess of the earlier to occur of (1) ninety (90) days following the Closing Date, or (2) the twentieth (20th) day preceding the Outside Closing Date (the "**Extension Period**"). Notwithstanding the foregoing, in the event all of the conditions to Closing set forth above in Section 11.1 above have not been satisfied by the Closing Date, District may, at its sole option, extend the Closing Date for the period of time necessary to satisfy such unsatisfied condition(s), but in no event shall such extension be beyond the Extension Period. In the event Developer proceeds under clause (iii) above or District extends the Closing Date as aforesaid, Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 11.1 have been fully satisfied, but if any of such conditions precedent have not been satisfied by the end of the Extension Period, Developer may again proceed under clause (i), (ii) or (iv) above; provided, however, that in no event may any election by Developer pursuant to clause (i) result in a Closing after the Outside Closing Date.

11.3.2 Failure of a Condition to District's Obligation to Close. If all of the conditions to Closing set forth above in Section 11.2 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to: (i) waive such condition and proceed to Closing hereunder without a reduction of either Party's obligations hereunder; (ii) extend the Closing Date to permit Developer to satisfy such unsatisfied condition(s) to Closing, but in no event shall such extension be in excess of the Extension Period; or (iii) terminate this Agreement

and retain the Deposit, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement and without waiving any breach by either Party occurring prior to termination; or (iv) in the event such failure of a condition to Closing constitutes (or is the result of) an Event of Default, pursue any and all remedies available under Section 15.3. Notwithstanding the foregoing, in the event all of the conditions to Closing set forth above in Section 11.2 above have not been satisfied by the Closing Date, Developer may, at its sole option, extend the Closing Date for the period of time necessary to satisfy such unsatisfied condition(s), but in no event shall such extension be beyond the Extension Period. In the event District proceeds under clause (ii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 11.2 have been fully satisfied, but if any of such conditions precedent have not been satisfied by the end of the Extension Period, District may again proceed under clause (i), (iii) or (iv) above; provided, however, that in no event may any election by District pursuant to clause (i) result in a Closing after the Outside Closing Date.

11.3.3 Conditions Pertaining to District Approval. Notwithstanding the foregoing, if the conditions to Closing set forth above in Section 11.2 have not been satisfied because of the District's failure to perform any obligation of District hereunder or the failure of the District to approve any of the matters described in Sections 11.2(d), (e), (f), (g) and/or (h) despite the good faith, reasonable efforts of Developer and the District to agree upon the same, then the District shall only have all rights and remedies described in clauses (i) and (ii) of the first sentence of Section 11.3.2. If, in that instance, the District elects to proceed under said clause (ii) and such conditions precedent have not been satisfied by the end of the Extension Period, then either Party may terminate this Agreement upon written notice to the other Party given at any time prior to satisfaction of such conditions precedent, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement and without waiving any breach by either Party occurring prior to termination. If the Agreement is terminated by either Party pursuant to this Section 11.3.3, the District shall release the Deposit to Developer.

ARTICLE 12 - COVENANTS AND RESTRICTIONS

12.1 Covenants Running With the Land.

12.1.1 General. The Parties hereby acknowledge that it is intended and agreed that the agreements and covenants of Developer provided in this Agreement shall be covenants running with the land, and shall be binding on Developer and its successors, assigns and any other Person obtaining an ownership interest in the Property and the Buildings and other improvements constructed thereon (other than a transferee of a Residential Unit described in Section 13.4(iv)), for the benefit and in favor of, and enforceable by, District, for the time periods specified in this Agreement and the Related Agreements, but in no event beyond the issuance of the Certificate of Final Completion for the applicable Project Phase (except for such matters that expressly survive by their terms).

12.1.2 Covenant to be Recorded. In furtherance of the foregoing, at Closing the Construction Covenant shall be recorded in the Land Records and each Special Warranty Deed

shall reflect that they are subject and subordinate to such covenant.

12.2 Developer's Covenant and Indemnification Regarding Compliance with Environmental Laws. Subject to District's obligations pursuant to Section 9.2, Developer hereby covenants that, at its sole cost and expense, 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 the District and its officers, agents and employees shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend and hold the District and its officers, directors, agents and employees (individually, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") harmless from and against any and all actual 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 Party in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, or (ii) any Release or threatened Release of a Hazardous Material, or any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Property, first occurring after the Closing; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorneys' fees and court costs) to the extent arising solely from the negligence or willful misconduct of any Indemnified Party.

12.3 Nondiscrimination Covenant. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Laws, in the development and construction of the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Laws.

ARTICLE 13 - TRANSFER AND ASSIGNMENT

13.1 Reliance of District on Developer. Developer hereby recognizes and acknowledges that: (i) the Project is important to the general welfare of the community in which the Property is located; (ii) a Transfer is for practical purposes a transfer of this Agreement and the Development Site(s) and the Buildings and improvements constructed thereon; (iii) the qualifications and identity of Developer are of particular concern to the community and District; and (iv) District is entering into this Agreement with Developer because of the qualifications and identity of Developer, and in so entering into this Agreement, is willing to accept and rely on the obligations of Developer for the faithful performance of all of Developer's undertakings and covenants in this Agreement and the Related Agreements.

13.2 Transfer Prior to Issuance of Certificates of Completion. For, among other things, the reasons set forth in Section 13.1 above, Developer represents, warrants, covenants and agrees, for itself and its successors and assigns, that prior to District's issuance of a Certificate of Final Completion for a Project Phase, Developer shall not make or create, or suffer to be made or

created, any Transfer of the Development Site(s) (or any portion thereof) within that Project Phase, without the prior approval of District, except that after the issuance of a Unit Certificate of Completion, the Developer may transfer any Residential Units which have obtained a Unit Certificate of Completion. District's approval of a Transfer (other than a Permitted Transfer under Section 13.4) may be withheld in its sole and absolute discretion.

13.3 Transfer after Issuance of Certification of Completion. Notwithstanding any other provision of this Article 13, after the issuance of a Certificate of Final Completion for a Project Phase, Developer may Transfer the Development Site(s) (or any portion thereof) within that Project Phase without the prior consent of District. Developer agrees to provide prompt notice to District of any such Transfer to the extent required in the Related Agreements.

13.4 Permitted Transfers. Nothing contained in this Article 13 shall prohibit or limit any of the following: (i) Developer's creation of an Approved Mortgage or any foreclosure sale or deed-in-lieu of foreclosure resulting from an Approved Mortgagee's exercise of its rights under an Approved Mortgage all in accordance with the requirements governing such creation or foreclosure as set forth in the Construction Covenant or any other Related Agreement with respect thereto; (ii) any pledge of the ownership interests in Developer or other Person to an Institutional Lender, or any foreclosure of such ownership interests resulting from an Institutional Lender's exercise of its rights with respect to such pledge; (iii) assignment of Developer's interest in the Agreement to (x) an entity that is Controlled by the Key Member or (y) if the Key Member certifies to the District that it will not proceed to Closing, an entity Controlled by either or both of the "Key Members" identified under the Additional LDAs; (iv) the transfer of any Residential Unit by Developer to a purchaser of such Residential Unit after the issuance of a Unit Certificate of Completion for such Residential Unit; (v) transfer Developer's interest in the Agreement or the Project to one or more joint ventures, limited liability companies or other entities, created for the purpose of holding fee or leasehold title to all or a portion of the Project in which the partners, members or other owners comprise, directly or indirectly, Developer or its Affiliates and the party or parties making additional equity contributions, and in which Developer or its Affiliates serves as general partner, managing member or equivalent subject to the rights of such equity investors to designate a replacement general partner, managing member or equivalent upon specified events such as in the event of a default by Developer (or Developer's Affiliate) in such capacity; provided that such joint venture or other entity is Controlled by Key Member and the party(ies) making equity contributions are Institutional Lenders; (vi) the sublease of space in the Project to third party tenants, so long as such lease complies with this Agreement, and the applicable provisions of the Related Agreements; (vii) the granting of utility and similar easements required in connection with the development of the Property pursuant to the Final Development Plan; or (viii) Transfers to an owner's association or similar management entity of those portions of the Property that will be owned and/or maintained by the same. Each of the foregoing Transfers permitted under this Section 13.4 are "**Permitted Transfers**"; provided, however, that with respect to the Transfers described in clause (v) above, such Transfers shall only constitute "Permitted Transfers" if, immediately after giving effect thereto, the transferee is either: (x) an entity for which Key Member is responsible for day-to-day management and whose ownership interests are Controlled by an Institutional Lender and/or Key Member; or (y) any entity Controlled by Key Member. In addition, any mechanics', materialmens' or other involuntary lien that is bonded over, or insured against, or that is released in each case within the applicable notice and cure period under this

Agreement or the Construction Covenant shall not be prohibited.

13.5 No Release. In the absence of specific written agreement by District to the contrary, no Transfer, or approval by District thereof, shall be deemed to relieve Developer, or any other Person bound in any way by this Agreement or the Related Agreements, from any of its obligations under this Agreement or the Related Agreements (including the CBE Requirement) or deprive District of any of its rights and remedies under this Agreement or the Related Agreements.

13.6 Enforceability. Developer hereby acknowledges and agrees that the restrictions on Transfer pursuant to this Article 13 do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate any portion of the Property. Developer hereby waives any and all claims, challenges and objections that may exist with respect to the enforceability of the restrictions on Transfer contained in the Agreement, including any claim that such restrictions on Transfer constitute an unreasonable restraint on alienation.

ARTICLE 14 - [RESERVED]

ARTICLE 15 - DEFAULTS AND REMEDIES

15.1 Default by Developer. Each of the following shall constitute an "**Event of Default**" by Developer (or its successor or assign) under this Agreement:

(1) Developer shall fail to pay or cause to be paid any amount required to be paid by it under this Agreement or replenishment of the Deposit if and when required by Section 4.1.4, and such default shall continue for ten (10) Business Days after notice from District specifying such default;

(2) If Developer shall default in the observance or performance of any term, covenant or condition of this Agreement (other than the payment of any amount required to be paid by Developer pursuant to this Agreement) on Developer's part to be observed or performed (other than the Events of Default expressly set forth below) and Developer shall fail to remedy such default within thirty (30) days after written notice by District (which notice shall specify the nature of such default and that such default must be cured within the time period set forth in this Section 15.1(2)), or if such a default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), then Developer shall have such additional period of time as may be reasonably necessary to cure such default, but in no event more than an additional one hundred eighty (180) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;

(3) Developer shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise;

(4) Developer shall be adjudicated bankrupt or insolvent by any court;

(5) Involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Developer, or a receiver or trustee shall be appointed for all or substantially all of the property of Developer, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(6) Developer shall make an assignment for the benefit of creditors or Developer shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Developer;

(7) Developer shall fail to obtain or maintain in effect any insurance required of it under this Agreement, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Developer, its Architect, or its Contractors or subcontractors under this Agreement;

(8) Developer makes any Transfer in violation of the terms of this Agreement;

(9) An event of default occurs under a Related Agreement that is not cured within the notice and cure period set forth in such Related Agreement;

(10) The failure of any representations or warranties of Developer set forth in Section 10.2 to be true at the Closing in all material respects;

(11) Any failure of an Approved Guarantor to perform under a Guaranty, beyond any applicable notice and cure period;

(12) The failure of Developer to meet any outside date set forth on the Schedule of Performance; provided, however, that a failure of Developer to meet any outside date on any component of the Schedule of Performance shall be subject to the notice and cure provisions set forth in Section 15.1(2); or

(13) The failure of Developer to Commence Construction on any Project Phase by the outside date set forth on the Schedule of Performance.

15.2 Limitation Regarding Cure Periods. Notwithstanding any notice and cure period set forth in Section 15.1, in the event of a default prior to Closing, such notice and cure periods shall not extend the Outside Closing Date and shall terminate on such Outside Closing Date (and in no event shall any such notice and cure periods extend the Closing beyond the Outside Closing Date).

15.3 District Remedies in the Event of Default by Developer Prior to Closing. If an Event of Default by Developer occurs prior to Closing, District shall have the following remedies, at District's sole election: (a) District may terminate this Agreement and retain the Deposit as liquidated damages; and (b) District may pursue any and all other remedies available at law and/or in equity, including (without limitation) injunctive relief; excluding any claim for

consequential or other special damages.

15.4 District Remedies in the Event of Default by Developer Subsequent to Closing. If an Event of Default by Developer occurs subsequent to Closing, District shall have the remedies for such Event of Default only as to the specific Project Phase as to which the applicable Event of Default occurred, as and to the extent applicable, as provided in the Guaranties or under any other Related Agreement.

15.5 No Waiver by Delay. Notwithstanding anything to the contrary contained herein, any delay by District or Developer in instituting or prosecuting any actions or proceedings with respect to a default by Developer or District hereunder or in asserting its rights or pursuing its remedies under this section or otherwise, the Guaranties, any Related Agreement or any other right or remedy available under law or in equity, shall not operate as a waiver of such rights or to deprive District or Developer of or limit such rights in any way (it being the intent of this provision that neither District nor Developer shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by District or Developer hereunder must be made in writing. Any waiver in fact made by District or Developer with respect to any specific default by the other Party under this section shall not be considered or treated as a waiver of District or Developer with respect to any other defaults by the other Party or with respect to the particular default except to the extent specifically waived in writing.

15.6 Rights and Remedies Cumulative. The rights and remedies of District and Developer under this Agreement, the Guaranties and the Related Agreements, whether provided by law, in equity, or by the terms of this Agreement, the Guaranties or any Related Agreement, shall be cumulative, and the exercise by District or Developer of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

15.7 No Consequential or Punitive Damages. Notwithstanding the provisions of this Article 15 or anything in this Agreement to the contrary, in no event shall District or Developer be liable for any consequential, punitive or special damages; provided, however, that this section shall not be deemed to preclude or prevent the collection of any fees or monetary penalties expressly provided for in this Agreement or any Related Agreement.

15.8 Attorneys' Fees. In the event District prevails in any legal action or proceeding to enforce the terms of this Agreement, District shall be entitled to recover from Developer the reasonable attorneys' fees and costs incurred by District in such action or proceeding.

ARTICLE 16 - NOTICES

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

To District:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development

1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attn: Project Manager- McMillan

With a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, NW, Suite 1010S
Washington, DC 20001
Attn: Deputy Attorney General, Commercial Division

To Developer:

Vision McMillan Partners LLC
c/o EYA Development, LLC
4800 Hampden Lane, Suite 300
Bethesda, MD 20814
Attention: Brian A. Jackson

With a copy to:

Venable LLP
575 7th Street, NW
Washington, DC 20004
Attn: Robert G. Gottlieb, Esq.

and to:

Greenstein DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036
Attn: Judith R. Goldman, Esq.

Notices which shall be served 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 nationally recognized overnight delivery service, on the next business day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

ARTICLE 17 - MISCELLANEOUS

17.1 **Term of this Agreement**. The term of this Agreement will be from the Effective Date

until the earlier of (i) termination in accordance with the terms and conditions contained herein and (ii) issuance of the Phase 1 Certificate of Final Completion and the Phase 2 Certificate of Final Completion, except for those terms and conditions herein that expressly survive.

17.2 Information as to Members; Maintenance of Separate Books and Accounts. Developer agrees that until issuance of the Phase 1 Certificate of Final Completion and the Phase 2 Certificate of Final Completion: (a) Developer shall, at such time or times as District may reasonably request, furnish District with a complete statement, certified by a managing member of Developer as being true, accurate and complete, setting forth the identity of the members of Developer and their respective percentage interest in Developer; and (b) Developer shall keep books and accounts of its operations and transactions relating to the Project separate and distinct from any other property or business enterprise owned or operated by Developer (or any Member or Affiliate).

17.3 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 this 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 (or their) 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.

17.4 Force Majeure. Notwithstanding any other provision in this Agreement or the Related Agreements, neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in breach of, or default in, its obligations under this Agreement or Related Agreement, including, without limitation, the obligations with respect to the preparation of the Property for development or the beginning and completion of construction of any Project Phase, progress in respect thereto, or compliance with the Schedule of Performance, in the event of delay in the performance of such obligations due to any Force Majeure. It is the purpose and intent of this provision that, in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure, provided however, that (i) the Party seeking the benefit of this Section 17.4 promptly notifies the other Party of the existence of such Force Majeure event after it becomes aware of such Force Majeure event, which notice shall include such Party's estimate of the length of the delay that will be caused by such Force Majeure event and the actions such Party is taking to minimize such delay, (ii) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the time set forth on the Schedule of Performance and hired or otherwise designated an expediter to monitor and expedite the permit process (unless the same is not the responsibility of Developer hereunder), and (iii) 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. In addition to the foregoing, if a Force Majeure event causes one Party to delay its activities hereunder, the other Party whose activities are to follow such initially delayed activity, shall also be deemed to have suffered a Force Majeure event and the date by which such Party is obligated to satisfy its

applicable activities shall be delayed for such amount of time as may be reasonably necessary as a result of such delay

17.5 Estoppel Certificates. The Parties hereto shall, from time to time, within twenty (20) Business Days of request in writing of the other Party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Agreement and the Related Agreements are in full force and effect; (ii) this Agreement and the Related Agreements have not been modified or amended (or if they have, a list of the amendments); and (iii) to such Party's knowledge, the Party requesting the estoppel certificate is not then in default under this Agreement or any Related Agreement.

17.6 Representative not Individually Liable. No Person other than the Parties to this Agreement, and the permitted assignees of such Parties, shall have any liability or obligation under this Agreement. Without limiting the generality of the foregoing, (i) Developer agrees that no employee, official, consultant, contractor, agent or attorney engaged by District in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to Developer under this Agreement and (ii) District agrees that no Member, employee, consultant, contractor, agent or attorney engaged by Developer in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to District under this Agreement. Nothing in this Section 17.6 shall be deemed to preclude the liability of any Person for such Person's own fraudulent acts.

17.7 Provisions Not Merged. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to any portion of the Property from District to Developer or any successor-in-interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement; however, notwithstanding any other provision of this Agreement, the provisions of the Construction Covenant, Special Warranty Deeds and any other documents specified as such by the mutual agreement of the Parties shall supersede the provisions of this Agreement to the extent of any inconsistencies.

17.8 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.

17.9 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.

17.10 Applicable Law; Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Any suit, action, proceeding or claim relating to this Agreement or the Related Agreements or the transactions contemplated by this Agreement shall be brought exclusively in the United States District Court for the District or the Superior Court for the District, and District and Developer agree that such courts are the most convenient forum for resolution of any such action and further agree to submit the jurisdiction of such courts and

waive any right to object to venue in such courts.

17.11 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements and understandings related to the subject matter hereof, including, without limitation, the ERA. All Schedules and Exhibits hereto are incorporated herein by reference regardless of whether so stated.

17.12 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.

17.13 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 day that is not a Business Day is automatically extended to the next Business Day.

17.14 Successors and Assigns. This Agreement shall be binding upon and, subject to the provisions of Article 13, 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.

17.15 Third Party Beneficiary. No Person shall be a third party beneficiary of this Agreement.

17.16 WAIVER OF JURY TRIAL. ALL SIGNATORIES HERETO HEREBY, AND ALL PERSONS ACCEPTING AN INTEREST IN THE PROJECT THEREBY, WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

17.17 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.

17.18 Modifications and Amendments. None of the terms or provisions of this Agreement may be changed, waived, modified or terminated except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification or termination 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.

17.19 Anti-Deficiency. 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, and 1351; (ii) D.C. Official Code Section 47-105; (iii) the District 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 Home Rule Act.

17.20 Submission of Agreement. The submission by either Party to the other of this Agreement in unsigned form shall be deemed to be a submission solely for the other Party's

consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon the recipient or impose any obligations upon the submitting Party, irrespective of any reliance thereon, change of position or partial performance.

17.21 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable; 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.

17.22 Time of the Essence. 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.

17.23 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, it being understood and agreed that neither the method of computation of any participation nor any other provision contained herein, nor any acts of the parties hereto shall be deemed to create any such relationship.

17.24 Interest. In the event Developer fails to timely pay to or reimburse District any amounts due District pursuant to this Agreement, or if District advances any amounts to pay or satisfy any obligations of Developer under this Agreement (including, without limitation in curing any default of Developer), such amounts shall accrue interest at the rate of eleven percent (11%) per annum (or the highest rate permitted by law, if less) from the date such amount was due to District or expended by District until paid or reimbursed by Developer to District.

17.25 Release. As additional consideration for District's entry into this Agreement, Developer does hereby release and forever discharge District and its respective agents, servants, employees, directors, officers, attorneys, parents, Affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf, of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Developer may now have or claim to have as of the Effective Date, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon District's treatment of Developer's responses to District's Request for Expressions of Interest, the ERA, any documents executed in connection therewith (including any term sheets, business terms, letters of intent or memoranda of understanding) or any hearings held, notices given, representations made or deemed made, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the Effective Date. The agreement and covenant on the part of Developer under this Section 17.25 is contractual and not a mere recital, and the Parties to this Agreement acknowledge and agree that no liability whatsoever is admitted on the part of any Party.

17.26 No Construction against Drafter. This Agreement has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Agreement 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.

17.27 District Liability. Any review, analysis, examination, investigation or approval or consent by District pursuant to the terms of this Agreement or otherwise in connection with the Project or the Property is solely for the benefit of District and shall not be relied upon or construed by Developer or any other Person as acceptance by District of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with any Laws or other governmental requirements. In furtherance of the foregoing, the grant of consent or approval by District under this Agreement shall be intended solely to satisfy District's rights under this Agreement and for no other purposes and shall not be binding upon any particular District or other Governmental Authority having jurisdiction over any aspect of the Project, the Property or any portion thereof.

17.28 Limited Recourse to District. Subject to the additional limitations set forth in Section 17.19, any damages and claims against District shall be limited to the value of its interests in the Property and under this Agreement, including any reversionary interest in the improvements constructed on the Property and to all sums payable or paid to District under this Agreement.

17.29 District Approvals. All approvals or consents required to be obtained from District pursuant to this Agreement or any Related Agreement shall only be effective if in writing. In no event shall any alleged oral approval or consent of any matter or item be binding on District.

17.30 Confidentiality. The following provisions are applicable to requests filed under the District of Columbia Freedom of Information Act of 1976, as amended (D.C. Official Code §§ 2-531, et seq.) and the regulations promulgated thereunder ("**DCFOIA**") or any similar Law for information regarding this Agreement or any communications, documents, agreements, information or records with respect to this Agreement:

17.30.1 Non-Disclosure. Communications, documents, agreements, information and records that qualify as "**Confidential Information**" under DCFOIA or other Law provided to District by Developer under or pursuant to this Agreement shall be maintained by District as confidential, and District shall not disclose such information to any Persons other than the appropriate attorneys, accountants, underwriters, financial advisors, construction consultants, bond insurers, rating agencies, auditors and employees of District.

17.30.2 Requests for Disclosure. As required by the terms of this Agreement, Developer shall provide to District certain documentation and information on a strictly confidential basis. District acknowledges and agrees that Developer will be considered as "submitter" of such documentation and information for purposes of the DCFOIA. Accordingly, if a Person files a request under the DCFOIA or any similar Law for any such documentation or information (solely for purposes of this Section, a "Request"), District shall promptly notify Developer of the Request and allow Developer five (5) Business Days prior to the disclosure of such documentation or information (solely for purposes of this Section, the "Requested

Information") within which to object to District to the disclosure of any of the Requested Information. If, following receipt of Developer's objection to the release of the Requested Information, District determines that the Requested Information is exempt from disclosure pursuant to the DCFOIA or other Law, District shall assert such exemption from disclosure and decline to provide such information. If, following receipt of Developer's objection to the release of the Requested Information, District reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the DCFOIA or other Law, District shall promptly notify Developer of such determination, and shall refrain from making such disclosure for not less than five (5) Business Days following notice to Developer in order to afford Developer an opportunity to seek an injunction or other appropriate remedy.

17.30.3 **Notice**. Developer shall endeavor to clearly mark each page of all documents which Developer wishes to designate as Confidential Information "**Confidential Trade Secret Information, Contact Developer Before Any Disclosure**".

17.30.4 **Certain Required Disclosures**. Nothing in this Agreement shall limit or restrict District from disclosing, to the extent required by Law, any information, communication, or record to the United States Congress, the Council of the District of Columbia, the District of Columbia Inspector General or the District of Columbia Auditor.

17.31 Generally Applicable District Law. Developer acknowledges that (i) nothing set forth in this Agreement exempts the Project or any portion thereof from generally applicable laws and regulations in effect from time to time in the City of Washington, DC, (ii) execution of this Agreement by District is not binding upon, and does not affect the jurisdiction of or the exercise of police or regulatory power by, District agencies, including independent agencies of the District in the lawful exercise of their authority and (iii) no approval (or deemed approval) provided by District as a contract party to this Agreement shall in any way bind or be considered to be an approval by any District agency or independent agency (including the Zoning Commission and the Board of Zoning Adjustment) acting in its capacity as a Governmental Authority (and not as a contract party to this Agreement).

17.32 Fees of the Office of the Attorney General. For purposes of any provision of this Agreement where Developer is obligated to pay or reimburse District's attorneys' fees and expenses, in the event District is represented by the Office of the Attorney General for the District, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current Adjusted Laffey Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

17.33 Laws. Any reference to a specific Law in this Agreement shall mean such Law as it may be amended, supplemented or replaced, except as the context otherwise may require.

[*Remainder of this page intentionally blank. Signatures follow.*]

IN TESTIMONY WHEREOF, District and Developer have caused these presents to be signed on their behalf as of the Effective Date.

District:

APPROVED AS TO LEGAL SUFFICIENCY

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

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Developer:

VISION MCMILLAN PARTNERS LLC, a District of Columbia limited liability company

By: McMillan Associates LLC, a Delaware limited liability company, Its Managing Member

WITNESS

By: _____

Name: _____

Title: _____

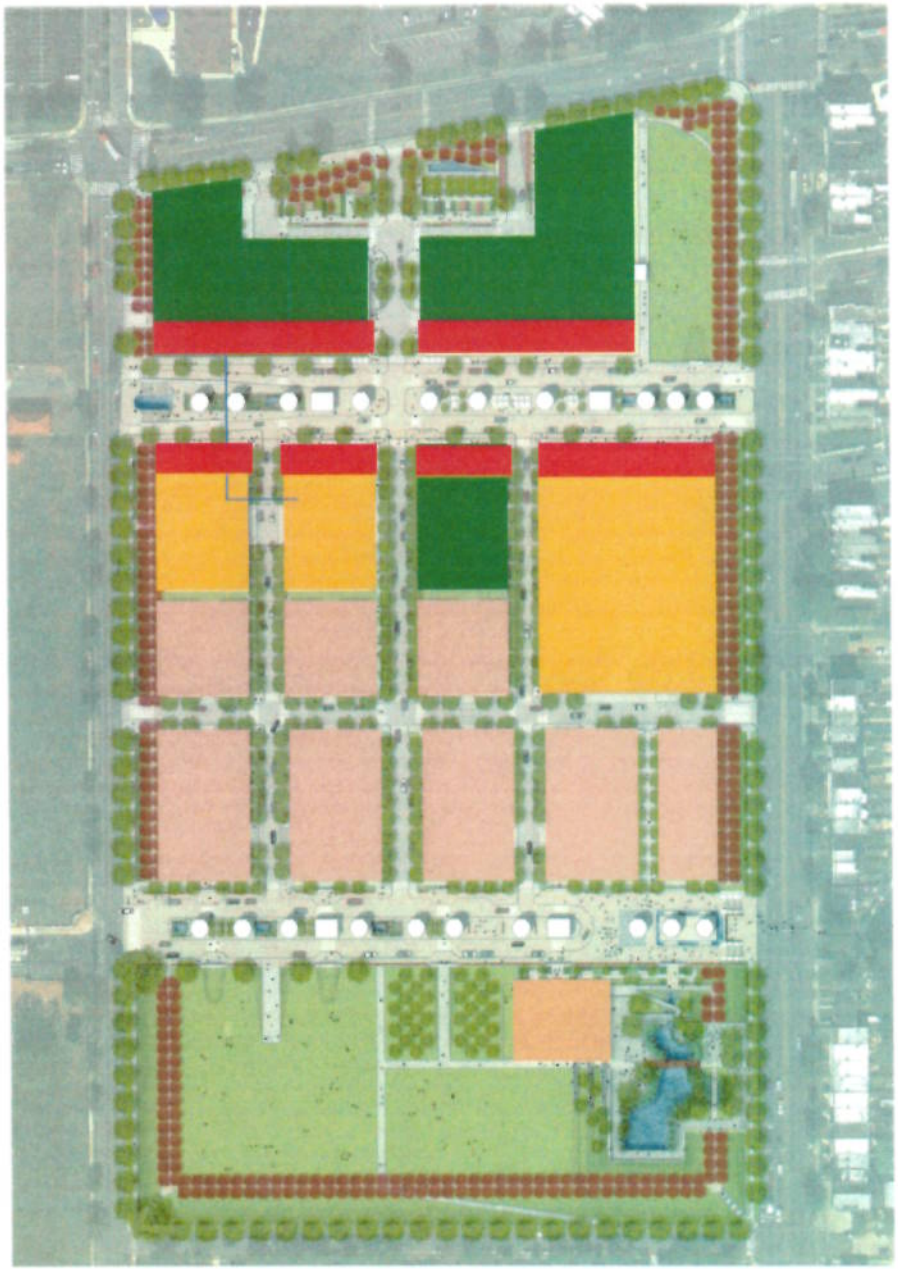
By: _____

Name: _____

Title: _____

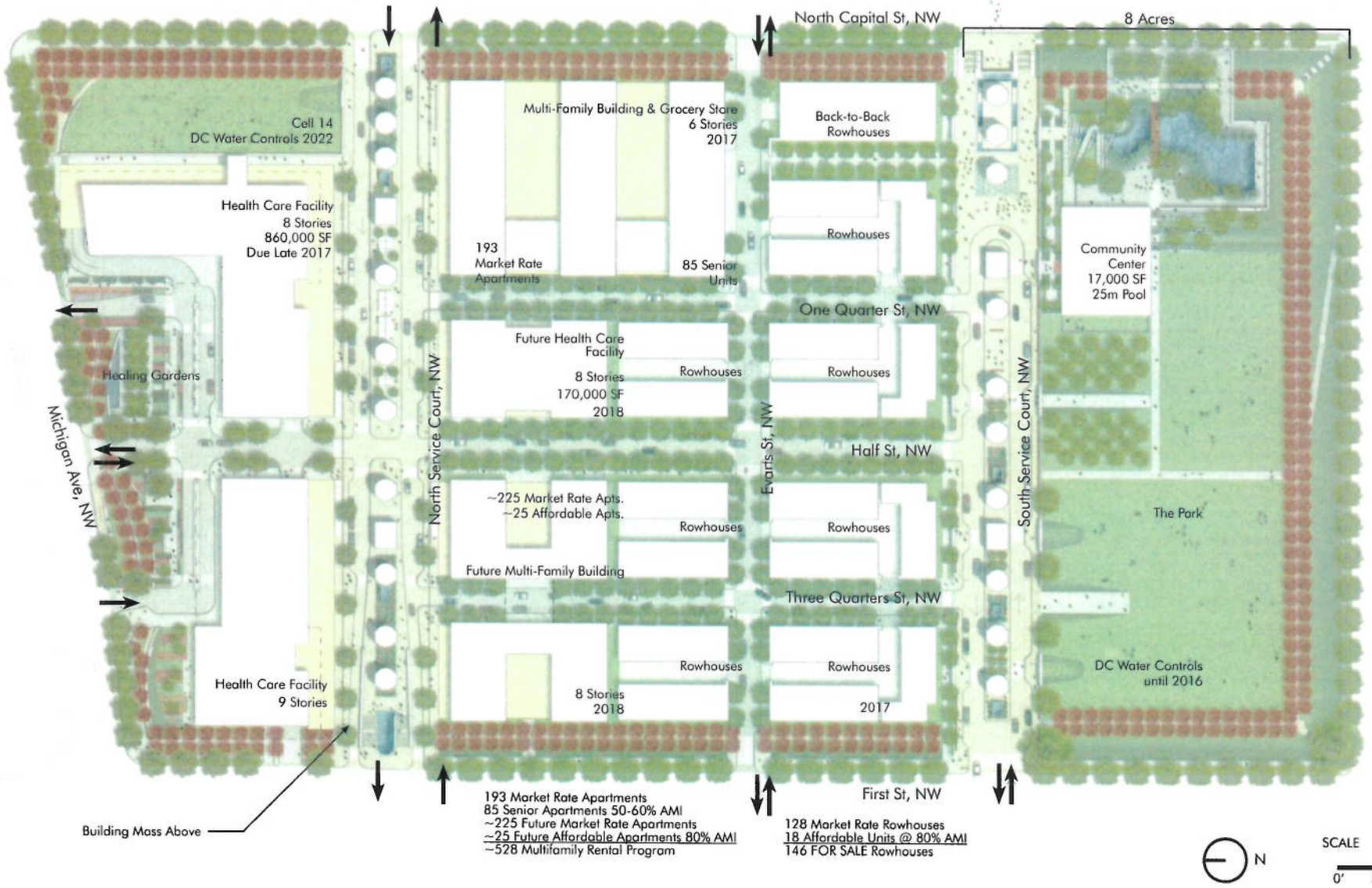
Schedule 2.1 A

Schedule 2.1 Concept Plan – Land Use



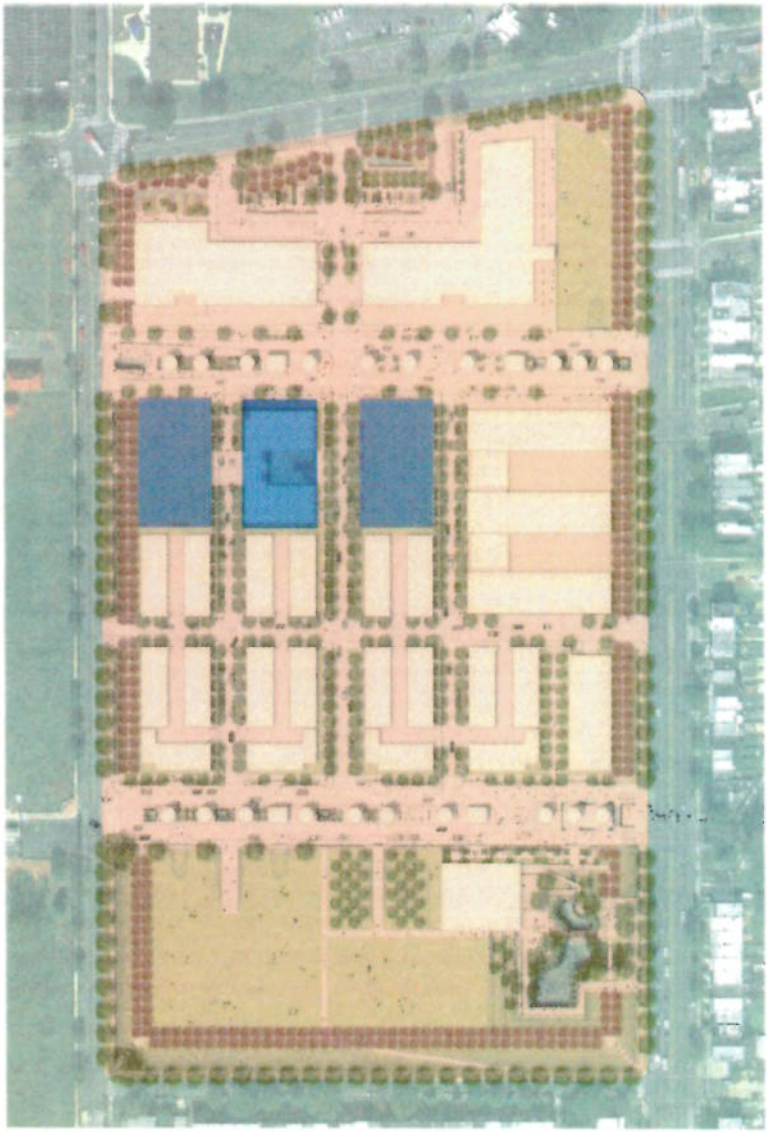
- Health Care – Medical Office Buildings
- Residential - Multi Family Buildings
- Residential - Row Houses
- Civic – Community Center
- Retail Frontage

Schedule 2.1 B



Schedule 2.2 A

Schedule 2.2: Development Site – Phases

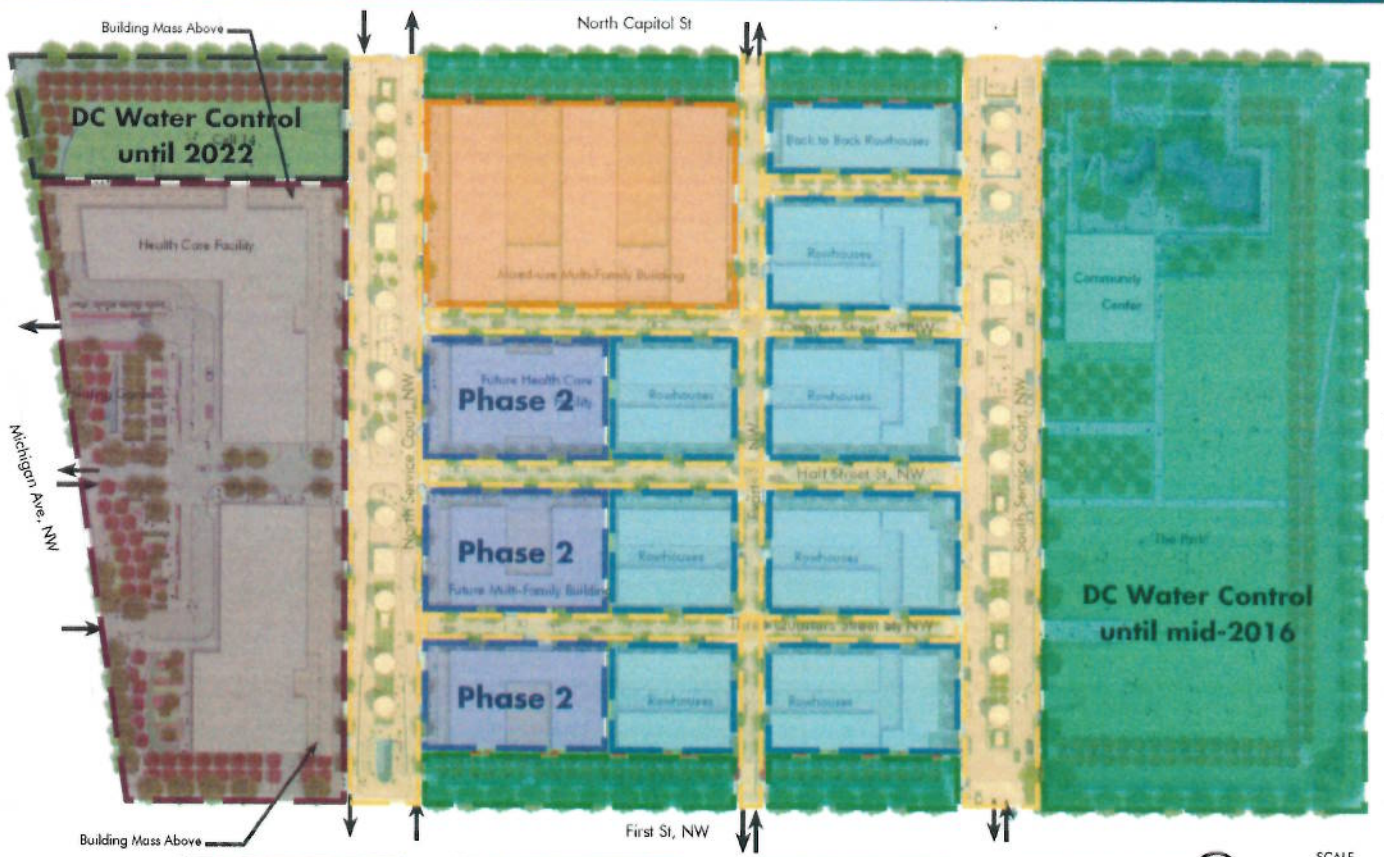


Phase 1 -
Stage 1 and Stage 2 Consolidated PUD
Parcels 1, 4, 5, 6, 7, 8 & 9

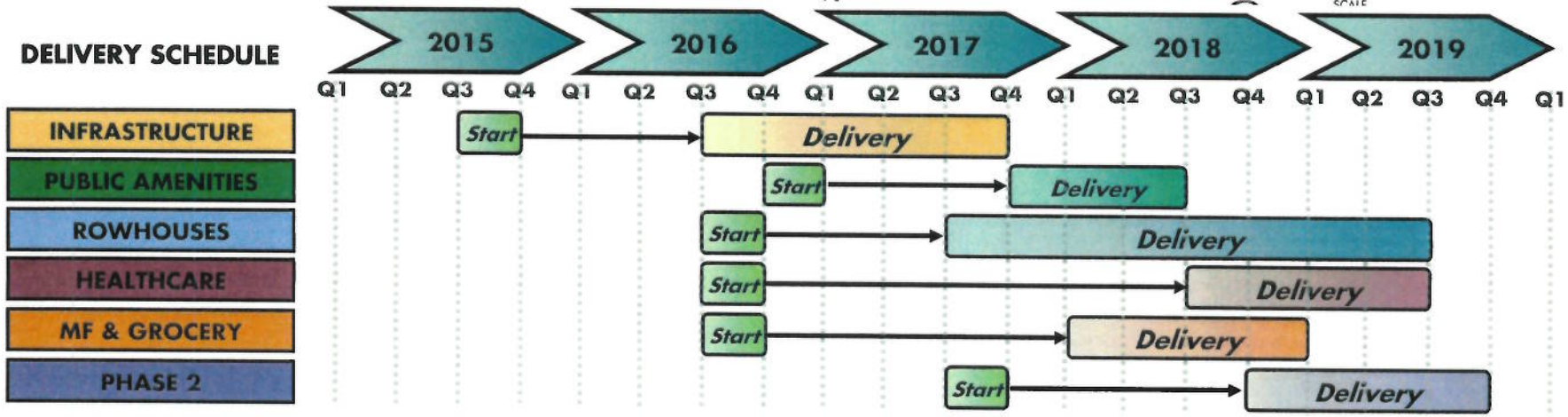
Phase 2
Separate Stage 2 filing at a later date
Parcels 2 & 3

Schedule 2.2 B

CONSTRUCTION PHASING PLAN



DELIVERY SCHEDULE



Purchase Price Schedule

The Lot Purchase Price for each Lot Type is set forth below. The Purchase Price for each Project Phase shall be calculated as the sum of the product of (i) the number of Lots of each type in the Project Phase and (ii) the Lot Purchase Price for each Lot Type.

Lot Type	Lot Purchase Price
Market Townhome (14x38)	**$ 79,469**
Market Townhome (16x38)	**$ 85,658**
Market Townhome (18x38)	**$ 90,300**
Market Townhome (Back to Back - Interior)	**$ 81,900**
Market Townhome (Back to Back - End)	**$ 78,120**
Market Townhome (20x50)	**$ 90,000**
IZ Townhome (14x36)	**$ (40,700)**

Below is an example of the Phase 1 Purchase Price. The actual Phase 1 Purchase Price will be calculated based on the actual mix of units in Phase 1 at the Phase 1 Closing.

Lot Type	# of Phase 1 Lots	Lot Purchase Price	Total Phase 1 Purhcase Price
Market Townhome (14x38)	**7**	**$ 79,469**	**$ 556,283**
Market Townhome (16x38)	**24**	**$ 85,658**	**$ 2,055,795**
Market Townhome (18x38)	**21**	**$ 90,300**	**$ 1,896,300**
Market Townhome (Back to Back - Interior)	**6**	**$ 81,900**	**$ 491,400**
Market Townhome (Back to Back - End)	**2**	**$ 78,120**	**$ 156,240**
Market Townhome (20x50)	**2**	**$ 90,000**	**$ 180,000**
IZ Townhome (14x36)	**11**	**$ (40,700)**	**$ (447,700)**
Total	**73**		**$ 4,888,318**

Townhouse Deposit Schedule

LDA Deposit: Five percent (5%) of the total Purchase Price for Phase 1 and Phase 2. The LDA Deposit is calculated in the table below based on the current Purchase Price for Phase1 and Phase 2. The amount of the LDA Deposit will be adjusted if the Purchase Price changes.

Lot Type	# of Lots	Lot Purchase Price	Total Purchase Price	LDA Deposit (5% of Total Purchase Price)
Market Townhome (14x38)	14	$ 79,469	$ 1,112,566	
Market Townhome (16x38)	48	$ 85,658	$ 4,111,590	
Market Townhome (18x38)	42	$ 90,300	$ 3,792,600	
Market Townhome (Back to Back - Interior)	12	$ 81,900	$ 982,800	
Market Townhome (Back to Back - End)	4	$ 78,120	$ 312,480	
Market Townhome (20x50)	4	$ 90,000	$ 360,000	
IZ Townhome (14x36)	22	$ (40,700)	$ (895,400)	
Total	146		$ 9,776,636	$ 488,832

Additional Deposit: Fifteen percent (15%) of the Purchase Price for the Project Phase upon which the District has commenced Property Work. Below is an example of the Phase 1 Additional Deposit. The actual Phase 1 Additional Deposit will be calculated based on the mix of units in Phase 1 at the Commencement of Property Work for Phase 1.

Lot Type	# of Phase 1 Lots	Lot Purchase Price	Total Phase 1 Purhcase Price	Phase 1 Additional Deposit (15% of Phase 1 Purchase Price)
Market Townhome (14x38)	7	$ 79,469	$ 556,283	
Market Townhome (16x38)	24	$ 85,658	$ 2,055,795	
Market Townhome (18x38)	21	$ 90,300	$ 1,896,300	
Market Townhome (Back to Back - Interior)	6	$ 81,900	$ 491,400	
Market Townhome (Back to Back - End)	2	$ 78,120	$ 156,240	
Market Townhome (20x50)	2	$ 90,000	$ 180,000	
IZ Townhome (14x36)	11	$ (40,700)	$ (447,700)	
Total	73		$ 4,888,318	$ 733,248

Below is an example of the Phase 1 Purchase Price. The actual Phase 1 Purchase Price will be calculated based on the actual mix of units in Phase 1 at the Phase 1 Closing.

Lot Type	# of Phase 1 Lots	Lot Purchase Price	Total Phase 1 Purhcase Price
Market Townhome (14x38)	**7**	**$ 79,469**	**$ 556,283**
Market Townhome (16x38)	**24**	**$ 85,658**	**$ 2,055,795**
Market Townhome (18x38)	**21**	**$ 90,300**	**$ 1,896,300**
Market Townhome (Back to Back - Interior)	**6**	**$ 81,900**	**$ 491,400**
Market Townhome (Back to Back - End)	**2**	**$ 78,120**	**$ 156,240**
Market Townhome (20x50)	**2**	**$ 90,000**	**$ 180,000**
IZ Townhome (14x36)	**11**	**$ (40,700)**	**$ (447,700)**
Total	**73**		**$ 4,888,318**

Schedule 4.2.4 Developer's Approved Guarantors

Developer	Project-Specific Entity	Approve Guarantor
EYA	McMillan Associates, LLC	EYA Development LLC
JAIR LYNCH Development Partners	LDP McMillan Land Acquirer, LLC	LDP Holdings, LLC
Trammell Crow Company	TC MidAtlantic Development IV, INC.	CBRE, Inc.

Exhibit E
Townhouse
Schedule of Performance

Following is the Schedule of Performance with estimated dates, which may be amended and extended with the approval of DMPED, or otherwise upon an event of force majeure:

- Phase 1 Closing: 90 days after completion of Horizontal Development necessary to construct Phase 1 Vertical Development.
- Commence Phase 1 Construction: 30 days after Phase 1 Closing
- Completion of Phase 1: Not more than 15 years following Closing
- Phase 2 Closing: 48 months after Phase 1 Closing
- Commence Phase 1 Construction: 30 days after Phase 1 Closing
- Completion of Phase 2: Not more than 15 years following Closing

The Community Benefits Agreement (if applicable)

[Not Applicable]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
ACTING DIRECTOR

June 24, 2014

Shiv Newaldass
Project Manager
Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004

Dear Mr. Newaldass:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and Vision McMillan Partners, 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: McMillan Redevelopment. 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 i 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: N/A
DISTRICT CONTRACTING AGENCY: DMPED
CONTRACTING OFFICER: Shiv Newaldass
TELEPHONE NUMBER:
TOTAL CONTRACT AMOUNT: TBD
EMPLOYER CONTRACT AMOUNT: TBD
PROJECT NAME: McMillan Redevelopment
PROJECT ADDRESS: North Capitol Street, Michigan Ave NW, 1st Street NW, Channing St NW
CITY: Washington STATE: DC ZIP CODE:
PROJECT START DATE: 2015 PROJECT END DATE: 2019
EMPLOYER START DATE: 2015 EMPLOYER END DATE: 2019

EMPLOYER INFORMATION

EMPLOYER NAME: Vision McMillan Partners, LLC
EMPLOYER ADDRESS: 1055 Thomas Jefferson St NW Suite 600
CITY: Washington STATE: DC ZIP CODE: 20007
TELEPHONE NUMBER: 202.337.1025 FEDERAL IDENTIFICATION NO.:
CONTACT PERSON: Adam C. Weers
TITLE: Authorized Representative
E-MAIL: aweers@trammellcrow.com TELEPHONE NUMBER: 202.337.1025
LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION NUMBER: N/A
D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: N/A
ARE YOU A SUBCONTRACTOR ☐ YES ☑ NO IF YES, NAME OF PRIME CONTRACTOR: N/A

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. 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: _____

EMPLOYER Senior Official

Vision McMillan Partners, LLC

Name of Company

1055 Thomas Jefferson St NW Suite 600

Washington, DC 20007

Address

202.337.1025

Telephone

aweers@trammellcrow.com

Email

_____

Associate Director for First Source
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
202-698-6284
firstsource@dc.gov

6/23/14

Date

VISION MCMILLAN PARTNERS

Date:	November 4, 2013
To:	Department of Employment Services
Subject:	First Source Employment Agreement for the McMillan Redevelopment
From:	Vision McMillan Partners

In conjunction with the upcoming LDA and Surplus/Disposition hearings for the redevelopment of the former McMillan Sand Filtration property, Vision McMillan Partners ("VMP"), the developer of the McMillan project, has been asked to enter into a First Source Agreement with respect to the private developments that will be constructed on the portions of McMillan which will be sold by the District to VMP.

Prior to selling land parcels to VMP, the District will entitle the property and complete certain land development and infrastructure work, after which it will sell the land in question to VMP at fair market value. The highly complex and lengthy entitlements process required for McMillan, which includes the Historic Preservation Review Board, Mayor's Agent, and Zoning Commission, has not yet been completed. Similarly, the building design and permitting process, which will begin subsequent to the completion of the entitlements process, has not yet commenced and thus, construction activity at McMillan is not anticipated to commence until 2015.

Given the significant amount of time still remaining before construction start, much of the specific information regarding the contracting and construction of the private developments which will be subject to the executed First Source Agreement is not currently available. Upon selecting general contractors and finalizing the construction plans for each anticipated development, VMP will have its contractors enter into a First Source Agreement (identical to the form of First Source Agreement executed by VMP) which includes specific contract amounts and employment plans for each respective vertical development project.

Thomas, Carlos (DOES)

From: Graham, Anetta (DOES)
Sent: Monday, June 23, 2014 12:07 PM
To: Thomas, Carlos (DOES)
Subject: FW: McMillan-First Source Executed
Attachments: McMillan_First Source Agreement.pdf; McMillan_First Source Agreement Exhibit A_FINAL.doc

Anetta Graham
Supervisor, First Source Program
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
(202)698-3757 Direct
anetta.graham@dc.gov
www.does.dc.gov

From: Hubbard, Drew (DOES)
Sent: Monday, June 23, 2014 11:50 AM
To: Graham, Anetta (DOES)
Subject: FW: McMillan-First Source Executed

Drew Hubbard
Associate Director, Employer Services
First Source - Office of Apprenticeship Information & Training - Business Services Group
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
Phone: (202) 698-6006 Fax: (202) 698-5646
Drew.Hubbard@dc.gov
www.does.dc.gov

From: Weers, Adam @ Washington DC [mailto:AWeers@trammellcrow.com]
Sent: Monday, June 23, 2014 11:33 AM
To: Hubbard, Drew (DOES)
Cc: Newaldass, Shiv (EOM)
Subject: RE: McMillan-First Source Executed

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 **Vision McMillan Partners LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (the "Developer").

RECITALS

A. Pursuant to three (3) Land Disposition and Development Agreements to be entered between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development ("DMPED"), the District owns that twenty-five (25) acre parcel of real property, known as the McMillan Sand Filtration Site and situated on North Capitol Street, NW, Washington, D.C. and known for tax and assessment purposes as Lot 0800 in Square 3128 (the "**McMillan Site**"), the District intends to convey the fee interest in a portion of the McMillan Site to Developer to provide for the development of the McMillan Site anticipated to contain a mix of uses including residential (with affordable housing), retail and healthcare uses, while also retaining a portion of the site as a public park(the "Project").

B. The Developer and DMPED intend to enter into three (3) separate Land Disposition and Development Agreements each representing a "Phase", one related to the planned for-sale townhome residential uses, one for the planned multi-family residential uses (and related retail), and one for the healthcare uses (and related retail). Each Land Disposition and Development Agreement will correspond to an individual member of the Developer and a Phase and is referred to herein collectively as "Land Disposition and Development Agreement".

C. Pursuant to the Land Disposition and Development Agreement, the Developer covenants that it has executed and will comply in all respects with this Agreement.

D. 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 **$540,484,706**. The CBE Minimum Expenditure is therefore **$189,169,647**.

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than ninety (90) days after the issuance of a final Certificate of Occupancy by the District for the final Phase of the Project ("Expenditure Period"). If within six (6) 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 for the final Phase of the Project, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

Section 1.3 Adjustments to the Total Development Budget or CBE Minimum Expenditure. If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure ("Adjustment"). The CBE Minimum Expenditure and Contingent Contributions (if applicable as defined herein) shall be automatically increased in the case of an increase or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of this Agreement and be provided to the Developer and ODCA. The Total Development Budget outlined in Attachment 1 for each Phase of the Project is preliminary and will change as the Project moves through the entitlement process and the true cost of construction is determined. Thus a modified Attachment 1 will be submitted by Developer in accordance with this Section 1.3.

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, other than a marketing website targeted towards tenants and potential buyers or renters of the townhome or multifamily residences, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.

ARTICLE III
INFORMATION SUBMISSIONS AND REPORTING

Section 3.1 CBE Utilization Plans. Developer shall submit or require its general contractor to submit a CBE utilization plan to DSLBD for approval before or simultaneously with the execution of this Agreement, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without notifying the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for it or its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable and to the Office of the District of Columbia Auditor ("ODCA").

Section 3.2 Quarterly Reports.

(a) Throughout the Expenditure Period, regardless of whether the CBE Minimum Expenditure is achieved before the end of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports ("Quarterly Reports") for the Project which identify:

(i) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the amount of the contract;

(ii) the nature of the contract including a description of the goods procured or the services contracted for;

(iii) the amount actually paid by Developer to the CBE under such contract that quarter and to date;

(iv) the CBE certification number issued by DSLBD;

(v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and

(vi) the percentage of overall development expenditures which were to CBEs.

(b) The Quarterly Reports shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each calendar-year quarter. The Quarterly Reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Reports unless and until the company is certified by DSLBD as a CBE**.

(i) In order to obtain credit towards the CBE Minimum Expenditure requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor.** ***CREDIT WILL ONLY BE GIVEN FOR THE PORTION OF THE CONTRACT/ SUBCONTRACT PERFORMED BY A CBE USING THEIR OWN ORGANIZATION AND RESOURCES.***

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure if the Developer's utilized contractor/ subcontractor:

(1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;

(2) has a pending application before DSLBD seeking CBE certification;

(3) has an expired CBE certification;

(4) has a CBE certification application that DSLBD denied; or

(5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification is valid for **two years**. If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer may check the DSLBD website: http://lsdbe.dslbd.dc.gov/public/certification/search.aspx

(d) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the

CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(e) Concurrently with the submission of the Quarterly Reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report.

(f) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Reports shall contain the caption "CBE MINIMUM EXPENDITURE ACHIEVED." Additionally, the final Quarterly Report shall contain the caption "FINAL QUARTERLY REPORT" and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

Section 3.3 Mandatory Reporting Requirements Meeting. Within ten (10) business days of executing this Agreement, the Developer and ODCA shall meet to discuss the reporting requirements during the Expenditure Period. In the event ODCA is unavailable to meet within 10 business days, Developer and ODCA shall meet on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer and ODCA.

Adam C. Weers
Vision McMillan Partners LLC
c/o Trammell Crow Company, LLC
1055 Thomas Jefferson St NW, Suite 600
Washington, DC 20007

Lorin Randal
Vision McMillan Partners LLC
c/o EYA LLC
4800 Hampden Lane
Suite 300
Bethesda, MD 20814

Anthony Startt
Vision McMillan Partners LLC
c/o Lynch Development Advisors LLC
1508 U Street, NW
Washington, D.C. 20009

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, intended to be contributed by the non-institutional investors or by the private developer,("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. Although each Phase is included when determining the 20% CBE Equity and Development Participation requirements as required by this Article V, the twenty percent (20%) CBE Equity and Development Participation may be achieved through participation in certain Phases of the Project, but not necessarily in every Phase of the Project, so long as the overall 20% is achieved;

(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 **$47,292,412**.

(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 **$47,292,412**.

(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.*, **$9,458,482**.

(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 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

[1] See Attachment 6 for a list of suggested outreach activities.

example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, **$2,364,621**.

In the event a CBE hired as part of the Project goes out of business or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry ("Request"). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% ("Approved Deduction"), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

Section 6.2 Failure to Meet Equity and Development Participation Requirements. Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement and of the Land Disposition and Development Agreement.

Section 6.3 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 6.4 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Primary Contact. The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

Section 7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:	Department of Small and Local Business Development 441 4th Street, N.W., Suite 850 North Washington, DC 20001 Attention: Director Tel: (202) 727-3900 Fax: (202) 724-3786
and	Office of the Deputy Mayor for Planning and Economic Development Government of the District of Columbia John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 317 Washington, DC 20004 Attention: Deputy Mayor for Planning and Economic Development Tel: (202) 727-6365 Fax: (202) 727-6703
With a copy to:	Office of the Attorney General John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 407 Washington, DC 20004 Attention: Attorney General Tel: (202) 724-3400 Fax: (202) 347-8922
To ODCA:	Office of the District of Columbia Auditor 717 14th ST NW, Suite 900 Washington, DC 20005 Attention: District of Columbia Auditor 202-727-3600
To Developer:	Vision McMillan Partners LLC c/o Trammell Crow Company, LLC 1055 Thomas Jefferson St NW, Suite 600 Washington, D.C. 20007 Attention: Adam C. Weers Tel: 202.337.1025 Fax 202.337.7365 Vision McMillan Partners LLC c/o Lynch Development Advisors LLC 1508 U Street, NW Washington, D.C. 20009 Attention: Anthony Startt Tel: 202.462.1092

Vision McMillan Partners LLC
c/o EYA LLC
4800 Hampden Lane, Suite 300
Bethesda, MD 20814
Attention: Brian Allen Jackson
Tel: 301.634.8600
Fax 310.634.8601

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.

(i) 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.

(ii) DSLBD hereby acknowledges and agrees that Developer may assign all its right, title and interest in the 35% CBE subcontracting component in one or more of the Phases of the Project to another entity, which may include one of the current members of the Developer entity, that will develop the improvements to be constructed for the particular Phase being assigned. Upon the occurrence of such an assignment, all of Developer's obligations under this Agreement with respect to the 35% CBE subcontracting component of the particular Phase being assigned shall become the obligations of the assignee, including the obligations contained in Article VI of this Agreement - Contingent Contributions for Failure to Meet CBE Minimum Expenditure - relative to the particular Phase being assigned, and Developer shall simultaneously be deemed released from such obligations; except that the Equity and Development Participation requirements of Article V of this Agreement shall not be assigned. Attached hereto is a form sample Partial Assignment and Assumption of Certified Business Enterprise Utilization and Participation Agreement which DSLBD reserves the right to amend this form sample.

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

Sample Partial Assignment and Assumption of Certified Business Enterprise Utilization and Participation Agreement

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 30th DAY OF September 2014

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Director

DEVELOPER, Vision McMillan Partners LLC, a District of Columbia limited liability company

BY: TC MidAtlantic Development IV Inc., a Delaware corporation, Its Authorized Representative

BY: _____
Adam C. Weers
Authorized Representative
TC MidAtlantic Development IV Inc.

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

By: _____

Jair K. Lynch, Authorized Representative
Lynch Development Advisors LLC
20% Development Participant
CBE # LSDR66246042016

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

By: _____

Jair K. Lynch, Authorized Representative
JLC EM Investor LLC
20% Equity Participant
CBE # LSR52577092016

Sig. Pages

DEVELOPER, Vision McMillan Partners LLC, a District of Columbi company

BY: TC MidAtlantic Development IV Inc., a Delaware corporation, Its Authorized Representative

BY: _____

Adam C. Weers
Authorized Representative
TC MidAtlantic Development IV Inc.

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

By: _____

Jair K. Lynch, Authorized Representative
Lynch Development Advisors LLC
20% Development Participant
CBE # LSDR66246042016

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

By: _____

Jair K. Lynch, Authorized Representative
JLC EM Investor LLC
20% Equity Participant
CBE # LSR52577092016

DSLBD
DC Department of Small & Local Business Development

COMPLIANCE REPORTING INSTRUCTIONS FOR PRIVATE DEVELOPMENTS

(Revised 3/12/14)

Entities or individuals (hereinafter "Developer") who enter into a Certified Business Enterprise Utilization (and Participation) Agreement ("CBE Agreement") with the Department of Small and Local Business Development ("DSLBD") must submit quarterly reports to both DSLBD and the District of Columbia Office of the Auditor ("ODCA") together with additional supporting documentation to DSLBD.

The CBE Agreement outlines reporting requirements for private developments. If the Developer fails to comply with the reporting requirements, penalties may be imposed as outlined in the CBE Agreement. The Developer should meet with its financial officer and/or general contractor when completing the quarterly reports. The Developer is required to meet with ODCA ten (10) days after the CBE Agreement is entered; and is encouraged to meet separately with DSLBD's compliance specialist if there are questions about DSLBD reporting requirements. Below is a quarterly report guide; all reports for each quarter should be submitted together as one packet.

Report Due	CBE Agreement Template Provided	Frequency	Report Must Be Submitted to:	Period Covered	Due Date
Quarter 1	Attachment 4[1]; E & D Participation*	Quarterly	DSLBD & ODCA	**1/1 to 3/31**	**April 30th**
Quarter 2	Attachment 4; E & D Participation*	Quarterly	DSLBD & ODCA	**4/1 to 6/30**	**July 31st**
Quarter 3	Attachment 4; E & D Participation*	Quarterly	DSLBD & ODCA	**7/1 to 9/30**	**October 30th**
Quarter 4	Attachment 4; E & D Participation*	Quarterly	DSLBD & ODCA	**10/1 to 12/31**	**January 31st**
Vendor Verification Forms	Attachment 5	Quarterly	DSLBD Only	**See above periods covered**	**With each quarterly report submission.**
Narrative Description of Outreach Efforts to CBE Firms	Attachment 6[2]	Quarterly	DSLBD Only	**See above periods covered**	**With each quarterly report submission**

Completing Vendor Verification Forms- (VVF) (Attachment 5):

The VVF must be completed by each company that subcontracts ***directly*** with the general contractor or prime ("1st Tier Subcontractor"). The 1st Tier Subcontractor shall list on each VVF each additional subcontractor under the contract and list all joint ventures (JV), including if the 1st Tier Subcontractor is a JV. If any JVs are 1st Tier Subcontractors or additional subcontractors, credit towards the CBE Minimum Expenditure will only be given for the portion of work performed by (and the portion of the money paid to) the CBE companies, not all monies paid to the CBE JV. (All JVs must also be noted on each Attachment 4 indicating only the work performed by CBE companies, not the CBE JV.)

Submitting Compliance Reports to DSLBD and ODCA:

Each quarterly report should be emailed to DSLBD at Compliance.Enforcement@dc.gov or jacarl.melton@dc.gov; and ODCA at csbe.compliance@dc.gov. The compliance contact for DSLBD is Jacarl Melton, (202) 727-3900 and for ODCA Sophie Kamal, (202) 727-3600.

Request for a Project Completion Letter:

Once the project has been completed as defined in the CBE Agreement, a written request to close out the project from being monitored by DSLBD and for final CBE Minimum Expenditure calculation may be submitted to jacarl.melton@dc.gov. The word 'FINAL' must be noted on the last packet submitted with such written request.

[1] Attachment 4 is a Microsoft Excel Workbook with three spreadsheets that must be completed.
[2] State if 'no outreach activities' for a quarter; and provide a written narrative explaining why.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

Vision McMillan Partners, L.L.C.
North Capitol Street and Michigan Avenue N.W.
SQUARE 3128
WASHINGTON, D.C.

Attachment 1 9/26/2014

PROJECT OVERVIEW

Project Name:	**McMillan Townhomes**	**McMillan Multi-Family**	**McMillan - Healthcare Uses**
Project Owner/Sponsor:	Vision McMillan Partners, LLC	Vision McMillan Partners, LLC	Vision McMillan Partners, LLC
Developer & Managing Member:	McMillan Associates LLC 4800 Hampden Lane Suite 300 Bethesda, MD 20814	Lynch Development Advisors, LLC 1508 U Street NW, Washington, DC 20009	Trammell Crow Company 1055 Thomas Jefferson, NW Suite 600 Washington, DC 20007
Local Ownership Partners:	n/a	Lynch Development Advisors, LLC	n/a
Lead Architect:	Lessard Design	MV+A Architects	Shalom Baranes Associates
Civil Engineer:	Bowman Consulting	Bowman Consulting	Bowman Consulting
Landscape Architect:	Nelson Byrd Woltz	Nelson Byrd Woltz	Nelson Byrd Woltz
Traffic Planner:	Gorove Slade	Gorove Slade	Gorove Slade
Zoning Counsel:	Holland & Knight	Holland and Knight	Holland & Knight
Advisory Neighborhood Commission (ANC):	ANC 5E	ANC 5E	ANC 5E
Project Location	N Capitol and Michigan Ave NW, Washington, DC 20002	N Capitol and Michigan Ave NW, Washington, DC 20002	N Capitol and Michigan Ave NW, Washington, DC 20002

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

	For Sale Townhome Residential Phase	Multi-Family Residential & Retail Phase	Healthcare & Retail Phase	Total
Construction/Permanent Loan	$ 56,923,339	$ 73,791,357	$ 268,895,923	$ 399,610,619
Low-Income Housing Tax Credit Equity	$ -	$ 4,837,238	$ -	$ 4,837,238
Institutional Equity	$ 6,087,300	$ 39,518,362	$ 179,263,949	$ 224,869,611
Sponsor Equity	$ 1,521,825	$ 2,079,913	$ -	$ 3,601,738
Deferred Development Fee	$ -	$ 1,051,587	$ -	$ 1,051,587
Reinvested Sales Revenue	$ 6,893,105	$ -	$ -	$ 6,893,105
Total Sources of Funds:	**$ 71,425,569**	**$ 121,278,457**	**$ 448,159,872**	**$ 640,863,898**

USES OF FUNDS - SUMMARY

Total Budget	$	624,281,236	100.00%
Exclusions	$	83,796,530	13.42%
Adjusted Budget	$	540,484,706	86.58%
CBE Minimum Expenditure	**$**	**189,169,647**	**35.00% of the adjusted budget.**

USES OF FUNDS	For Sale Townhome Residential Phase	Multi-Family Residential & Retail Phase	Healthcare & Retail Phase	Total Costs	Exclusions	Adjusted Budget	Justification Request for Exclusion
Acquisition							
Land	$ 9,776,636	$ 6,409,468	$ 17,928,000	$ 34,114,104	$ 34,114,104	$ -	Purchase Price, no contracting opportunity - DOES NOT include any costs paid to real estate agent, attorney, title company, etc.
Site improvements	$ 7,550,000	$ 1,616,939	$ 18,375,928	$ 27,542,867	$ -	$ 27,542,867	
Vertical construction	$ 29,762,980	$ 83,992,410	$ 276,285,712	$ 390,041,103		$ 390,041,103	

Hard Cost Contingency	$ 2,580,936	$ 5,398,171	$ 31,482,545	$ 39,461,652		$ 39,461,652	
Soft Costs							
Design and Consultants	$ 3,070,000	$ 5,578,323	$ 16,077,571	$ 24,725,894		$ 24,725,894	
Legal and Administrative	$ 1,137,838	$ 800,000	$ 7,994,293	$ 9,932,132		$ 9,932,132	
Taxes, Permits and Fees	$ 3,591,228	$ 1,536,673	$ 8,218,480	$ 13,346,381	$ 13,346,381	$ -	Fees paid NO expediter, that service is included in Design & Consultants
Development Fee	$ 1,766,735	$ 6,414,650	$ 13,162,321	$ 21,343,706		$ 21,343,706	
Project Contingency		$ 680,924	$ 850,000	$ 1,530,924	$ 1,530,924		Contingency costs are excluded; and must be included accordingly if used.
Community Benefits	$ 1,000,000	$ 1,500,000	$ 2,500,000	$ 5,000,000	$ 5,000,000	$ -	grants to specified nonprofit organizations
Marketing and Commissions	$ 2,054,964	$ 2,258,741	$ 23,123,648	$ 27,437,353		$ 27,437,353	
Financing							
Financing Fees	$ 683,080	$ 2,859,744	$ 8,933,631	$ 12,476,455	$ 12,476,455	$ -	selected by lender
Interest Carry	$ 3,542,514	$ 3,811,569	$ 9,149,189	$ 16,503,272	$ 16,503,272	$ -	const interest, no contracting opportunity
Financing Contingency and Reserves		$ 825,394		$ 825,394	$ 825,394	$ -	const interest and reserves, no contracting opportunity
Subtotals	$ 66,516,911	$ 123,683,007	$ 434,081,318	$ 624,281,236	$ 83,796,530	$ 540,484,706	

Total Project Budget	$	624,281,236
Total Exclusions	$	83,796,530
Adjusted Budget	$	540,484,706
CBE Minimum Expenditure	$	**189,169,647**
Contingent Contribution - 25% of CBE Minimum	$	47,292,412
Section 6.1(i) contribution example	$	47,292,412
Section 6.1(ii) contribution example	$	9,458,482
Section 6.1(iv) contribution example	$	2,364,621

Date: September 30, 2014

Approved by: Robert Summers, 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 MASTER MCMILLAN PROJECT

Submitted by: _____ Date: _____
(Name of Developer)

Approved by: _____ Date: _____
Robert Summers, Director (DSLBD)

Attachment 2

Target Sector List

(Narrative Description)

NO SUBMISSION FOR THE MASTER MCMILLAN PROJECT

Submitted by: _____ Date: _____
(Name of Developer)

Approved by: _____ Date: _____
Robert Summers, Director (DSLBD)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

Equity Participation and Development Participation Quarterly Report Attachment

BASIC INFORMATION

Reporting Quarter	
Report Submission Date *	
Project Name	
Address	

* This report is due no later than thirty days (30) after the end of each calendar-year quarter.

Name of Majority Owner	
Project Contact	
Telephone Number	
Email Address	
Anticipated Project Completion	

EQUITY PARTICIPATION INFORMATION

Non-Institutional/Purchaser's Equity Amount (Automatically Calculated)	$0

This number must match the Non-Institutional/Purchaser's Equity listed in Attachment 1. Any amendment to Attachment 1 must be pre-approved by DSLBD.

Minimum CBE Equity Participation Amount (20% of Non-Institutional/Purchaser's Equity)	

This number should be taken from Attachment 1.

Actual CBE Equity Participation Amount	

Add together dollar value of equity from ONLY CBEs (Column Labeled "Dollar Amount of Non-Institutional/Purchaser's Equity (including Sweat Equity) This Reporting Quarter")

Sweat Equity Amount (No More than 5% of Non-Institutional/Purchaser's Equity)	
% Sweat Equity (No More than 5% of Non-Institutional/Purchaser's Equity)	#DIV/0!

List All Owners/Partners (Who Contributed Non-Institutional/Purchaser's Equity) From Every Reporting Quarter (DO NOT LIST BANK EQUITY)	CBE (Y/N)	Dollar Amount of Non-Institutional/Purchaser's Equity (including Sweat Equity) This Reporting Quarter	% Non-Institutional/Purchaser's Equity (including Sweat Equity) This Reporting Quarter (Automatically Calculated)	% Revenue Distribution This Reporting Quarter	Legal Status of Owners/Partners This Reporting Quarter (i.e. LLC or Inc.)	Description of Team Member (owners/partners) Activities
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
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			#DIV/0!			
			#DIV/0!			

DEVELOPMENT PARTICIPATION INFORMATION

Minimum CBE Development Participation Amount (20% of Development Fees)	

This number should be taken from Attachment 1.

Total Actual CBE Development Participation Amount	

Add together development fees paid ONLY TO CBEs (Column labeled "Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity")

List Each Owner, Partner, Team Member, Participant, or Any Other Individual or Entity Who Received Development Fees This Reporting Quarter	CBE (Y/N)	Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity	% of Development Fees Paid this Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity (Automatically Calculated)
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!

Total Development Fees Paid This Quarter (Automatically Calculated)	$0

CHANGES IN INFORMATION

Please list below any changes, from the prior reporting quarter, made to a partner or owner's equity, revenue or legal status this reporting quarter

List Each Owner and Partner With an Equity, Revenue or Legal Status Change	Type(s) of Change (Equity, Revenue or Legal Status)	Describe the Change (Equity = Changes in the amount of equity the owner/partner put into the project, Revenue = Changes in the percentage of revenue distribution to an owner/partner, Legal Status = Changes in the legal status of an existing owner/partner)

CBE Utilization Plan

PROJECTED PROCUREMENT ITEMS (1)		ESTIMATED VALUE (2)	BID OPENING (3)	BID CLOSING (4)	STARTUP (5)	COMPLETION (6)	RESTRICTED OR OPEN (7)
ACQUISITION							
	Land	$ -					
	Site improvements	$ 27,542,867	May-16	Sep-16	Oct-16	May-18	Open
	Vertical construction	$ 390,041,103	May-16	Sep-16	Oct-16	May-18	Open
	Hard Cost Contingency	$ 39,461,652	May-16	Sep-16	Oct-16	May-18	Open
SOFT COSTS							
	Design and Consultants	$ 24,725,894	May-16	Sep-16	Oct-16	May-18	Open
	Legal and Administrative	$ 9,932,132	May-16	Sep-16	Oct-16	May-18	Open
	Taxes, Permits and Fees	$ -					
	Development Fee	$ 21,343,706	completed				
	Project Contingency						
	Community Benefits	$ -					
	Marketing and Commissions	$ 27,437,353	May-16	Sep-16	Oct-16	May-18	Open
FINANCING							
	Financing Fees	$ -					
	Interest Carry	$ -					
	Financing Contingency and Reserves	$ -					
	Totals	$ 540,484,706					
TOTALS		$ 540,484,706					

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.

CBE CONTRACT AWARDS (8)	
$	9,640,003
$	136,514,386
$	13,811,578
$	8,654,063
$	3,476,246
$	7,470,297
$	-
$	9,603,073
$	-
$	189,169,647

$	189,169,647

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
											$0.00	$0.00
						Total:	$0.00	$0.00	$0.00		$0.00	$0.00

DSLBD

CITY OF SMALL & LOCAL BUSINESS DEVELOPMENT

VENDOR VERIFICATION FORM ("VVF")

Calendar Year: *Select* **Quarter:** *Select*

PART I. Private Development Project and Agency Contract ("Project") Details:

Name:_____ (✓ one) is the ☐ Prime Contractor or ☐ Developer or ☐ General Contractor
Project: (✓ one)
☐ District Agency Contract: District Agency _____ & Contract # _____
☐ Private Development Project (Project Name): _____

Subcontract # / Name: _____
(✓ one) ☐ **CBE *Subcontractor or*** ☐ ***CBE Lower Tier Subcontractor***

PART II. CBE Subcontractor & Lower Tier Subcontractor Details:

Company _____ is a (✓all that apply) ☐ small business enterprise (SBE) ☐ certified business enterprise (CBE) ☐ disadvantaged business enterprise (DBE) ("CBE Company"), subcontractor that performed services or provided products to _____, which is *Select* on the *Select* tier for the Project. The CBE Company's CBE certification is active and the number is _____.

PART III. CBE Company's Subcontracts to Lower Tier CBE or Non-CBE Companies: (✓ one)

☐ a. CBE Company provided 100% of all services and/or products provided for the ***Entire Project*** **using its own organization and resources**, and did not subcontract any portion to a lower tier subcontractor. *(Skip to Part V.)*

☐ b. CBE Company provided 100% of all services and/or products provided for the ***Entire Subcontract*** **using its own organization and resources**, and did not subcontract any portion to a lower tier subcontractor. *(Skip to Part V.)*

☐ c. CBE Company **subcontracted a portion of the Subcontract** to a lower tier subcontractor. (List every CBE and non-CBE lower tier subcontractor. ***Credit will only be given for the portion of the contract/ subcontract performed by a CBE using their own organization and resources.***)

Lower Tier Subcontractor	Lower Tier Subcontractor is: SBE, CBE, DBE or Non-CBE	Total Amount of Lower Tier Subcontract	Amount Paid to Lower Tier Subcontractor This Quarter	Detailed Description of lower tier subcontractor's scope of work	CBE Certification Number	Did Lower Tier Subcontractor listed further Subcontract (if yes, must have VVF for all other lower tier CBE subcontracts
1.	Select	$	$			Select
2.	Select	$	$			Select
3.	Select	$	$			Select
4.	Select	$	$			Select

PART IV: CBE Subcontracting CREDIT:

A ***VVF*** for each CBE listed in Part III c. is provided with this VVF: (✓ one)

☐ **YES** or ☐ Previously Provided on _____ Date - Proceed;
☐ **NO – STOP THIS VVF WILL NOT BE ACCEPTED, AND NO CREDIT GIVEN, UNTIL VVFs FOR ALL CBEs LISTED IN PART III c. ARE PROVIDED!**

CBE Subcontracting Credit will only be assessed for the portion of services & goods provided by each CBE Company AND each CBE Lower Tier Subcontractor ***USING ITS OWN ORGANIZATION AND RESOURCES***.

PART V: Provide DETAILED Description of Scope of Work Provided by CBE Company:

The CBE Company provided the following scope of work/ products **using its own organization and resources** :_____. The subcontract work began on _____ *date* and is scheduled to be completed on date. The total amount of the subcontract = $_____ (*amount should include all change orders*); the total amount subcontracted to CBE lower tier subcontractors = $_____ (*amount should include all change orders*). CBE Company paid total of $ _____ to date for portion of subcontract performed with its own organization and resources; remaining amount to be paid to the CBE Company for portion of subcontract performed with its own organization and resources is $ _____.

ACKNOWLEDGEMENT

I declare, certify, verify, attest or state under penalty of perjury that the information contained in this Vendor Verification Form, and any supporting documents submitted, are true and correct to the best of my knowledge and belief. I further declare, certify, verify, attest or state under penalty of perjury that I have the authority and specific knowledge of the goods and services provided under each subcontract contained in this Vender Verification Form. I understand that pursuant to D.C. Official Code § 22-2402, any person convicted of perjury shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both. I understand that any false or fraudulent statement contained in this Vender Verification Form may be grounds for revocation of my CBE registration pursuant to D.C. Official Code § 2-218.63. I also understand that failure to complete this Vender Verification Form properly will result in no credit towards the SBE and CBE Subcontracting Requirements. Further, a Prime Contractor, General Contractor, Developer, CBE, or Certified Joint Venture that fails to comply with the requirements of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (D.C. Law 16-33) (the "Act") and of the CBE Agreement, shall be subject to penalties as outlined in the Act and the CBE Agreement.

NOTARIZATION

The undersigned, as a duly authorized representative of _____, CBE Company, swears or affirms that the statements made herein are true and correct.

Signature: _____ Title:_____

Print Name: _____ Date:_____

District of Columbia (or State/Commonwealth of _____); to wit:

Signed and sworn to or affirmed before me on this day of ,

, by , who is well known to me or has been sufficiently verified as the person who executed the foregoing affidavit and who acknowledged the same to be his/her free act and deed.

Notary signature: _____

(Seal)

My commission expires: _____

ATTACHMENT 6

DOCUMENTATION OF ADDITIONAL OUTREACH EFFORTS

The general contractor "GC" may submit the following written documentation of its certified business enterprise "CBE" outreach and involvement efforts:

(a) A listing of specific work scopes on a trade specific basis identified by the GC in which there are subcontracting opportunities for CBEs;

(b) Copies of written solicitations used to solicit CBEs for these subcontracting opportunities;

(c) A description of the GC's attempts to personally contact the solicited CBEs including the names, addresses, dates and telephone numbers of the CBEs contacted, a description of the information provided to the CBEs regarding plans, specifications and anticipated schedules for the work to be performed, and the responses of the CBEs to the solicitation;

(d) In the event CBE subcontractors are found to be unavailable, the GC must request a written Statement of CBE Unavailability from the DSLBD;

(e) A description of the GC's efforts to seek waiver of bonding requirements for CBEs, if bonding is required;

(f) A copy of the GC's request for reduction in or partial release of retainage for CBE;

(g) A copy of the contract between the prime contractor and each CBE subcontractor if a contract is executed between the District and the prime Contractor.