

4.2.2 *Referrals.* The Developer may obtain referrals from the Agency of prospective tenants that have self-certified their Annual Household Income as meeting the Designated Affordability Level. In adaptation to obtaining referrals from the Agency, the Developer may also obtain referrals of prospective tenants from other federal and District of Columbia agencies, provided such referrals comply with the requirements of this Covenant.

4.2.3 *Consideration of Applicants.* For the initial occupancy of the Property, Developer shall select Qualified Tenants through a lottery system as shall be further provided in the Affordable Housing Plan. Following the initial occupancy of the Property, the Developer shall consider each applicant in the order in which received by the Developer, whether received pursuant to the approved Affordable Housing Plan or referred pursuant to Section 4.2.2.

4.2.4 *Rejection of Applicants.* In connection with the leasing of an Affordable Unit, Developer may reject any applicant referred or located under the approved Affordable Housing Plan if, after diligent review of such applicant's application, the Developer determines in good faith that such applicant does not meet the Developer's criteria to lease or occupy an Affordable Unit, provided such criteria does not conflict with the requirements of this Covenant and applicable District of Columbia and federal laws. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, the Developer shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Developer shall provide the Agency with all documents evidencing Developer's review and rejection of an applicant.

4.2.5 *Determination of Eligibility.* Developer shall be solely responsible for determining the eligibility of the Qualified Tenants and for obtaining the executed Certification of Tenant Eligibility.

4.3 Rental Affordable Unit Lease Requirements.

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

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

4.3.3 *Developer to Maintain Copies.* The Developer shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants.

4.4 Initial Lease Terms.

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

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent (“**Maximum Allowable Rent**” or “**MAR**”) for each Affordable Unit shall be determined through the use of the formula $MAR = (DAL * OSF * 30\%) / 12 - MU$ (“**Rental Formula**”), where:

- (a) DAL = Income at the Designated Affordability Level
- (b) OSF = Occupancy Standard Factor
- (c) 30% = Thirty percent (30%)
- (d) 12 = Number of months in the lease period
- (e) MU = Monthly Utilities payment

4.54 Subsequent Lease Years.

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

4.54.2 *Submission by Affordable Tenant.* For each Affordable Tenant who intends to renew its residential lease, no earlier than sixty (60) days and no later than fifteen (15) days before each anniversary of the first day of a residential lease, Developer shall obtain from each such Affordable Tenant the following: (i) a Certification of Residency; and (ii) documents sufficient to allow the Developer to complete a Certification of Income. Developer shall not permit a renewal of an Affordable Tenant’s lease unless the Affordable Tenant has provided the Developer with these documents prior to the end of their lease term.

4.5.3 *Over-Income Formula; Over Income Tenant.*

(a) If the Annual Household Income of an Affordable Tenant at the time of a lease renewal exceeds the Designated Affordability Level for the applicable Affordable Unit, the Affordable Unit shall continue to be considered as an Affordable Unit and the Affordable Tenant shall be permitted to renew its lease. Any lease renewals during the LIHTC Restriction Period shall be made in compliance with the LIHTC regulatory requirements. Following expiration of the LIHTC Restriction Period, the rental rate to be paid by the Affordable Tenant during the renewal term shall be the lesser of: (i) as determined using the following formula, $OIF = (AHC * OSF * 30\%) / 12 - MU$ (“**Over-Income Formula**” or “**OIF**”) or (ii) the market-rate rental rate for a similar Residential Unit. OIF is calculating based on:

- (i) AHC = Annual Household Income

- (ii) OSF = Occupancy Standard Factor
- (iii) 30% = Thirty percent (30%)
- (iv) 12 = Number of months in the lease period
- (v) MU = Monthly Utilities payment

(b) Following expiration of the LIHTC Restriction Period, if, after providing the documents requested in Section 4.5.2, an Affordable Tenant is deemed to be an Over Income Tenant by Developer, the Developer shall, within ten (10) days after making such determination, give the Over Income Tenant written notice that its lease will not be renewed. The Developer shall permit the Over Income Tenant to continue to occupy the Affordable Unit at the current rent for not less than three (3) and no more than six (6) months after the end of the Over Income Tenant's lease. If the Over Income Tenant fails within six (6) months at the end of its lease to vacate the Affordable Unit, the Developer shall have the right to exercise its remedies available under terms of the lease agreement and applicable law.

4.5.4 *Affordable Tenant with No Annual Household Income.* If an Affordable Tenant is deemed to have no Annual Household Income at the time of a lease renewal, based on Certification of Income, the Developer may renew the Affordable Tenant's lease and the Affordable Tenant may continue to occupy the Affordable Unit, if the Affordable Tenant is not in default under any other provision of the lease agreement. The rental rate to be paid by the Affordable Tenant during renewal term shall be calculated in accordance with the Rental Formula, with such Affordable Tenant's income deemed to be at the Designated Affordability Level.

4.5.5 *Additional Rent from Subsidies.* Nothing herein shall be construed to prevent the Developer from collecting additional rental subsidy or rent-related payment from any federal agency or local agency paid to the Developer and/or the Affordable Tenant, or on behalf of an Affordable Tenant to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant.

4.6 No Subleasing of Rental Affordable Units. An Affordable Tenant shall not sublease or assign its lease to any Affordable Unit.

4.7 Representations of Qualified Tenant. By execution of a lease agreement for an Affordable Unit, each Qualified Tenant shall be deemed to represent and warrant to the District, Developer and the Certifying Authority, as applicable, and each of whom may rely, that the Qualified Tenant: (a) is leasing the Affordable Unit as a principal residence and has no ownership or leasehold interest in any other housing, (b) is not or will not sublease or assign any portion of its leasehold interest in the Affordable Unit to any Household, (c) will not allow any other Household to reside in the Affordable Unit with the Qualified Tenant except in strict compliance with the terms of the lease agreement, (d) will not allow more than the number of persons permitted under the terms of the lease, including the Qualified Tenant, to reside at the Affordable Unit; (e) has noted all persons in the Household on the lease agreement, and included all members of the Household over eighteen (18) years of age as parties to the lease agreement; and (f) acknowledges that their Household is the

beneficiary of District's public policy of increasing the affordable housing stock in the District of Columbia and in particular, on the Property, and desires, through its use and leasing of the Affordable Unit to further such public policy.

4.8 Representations of Developer. By execution of a lease agreement for an Affordable Unit, the Developer shall be deemed to represent and warrant to District, who may rely, that: (i) based solely upon the Certification of Income, the Household is a Qualified Tenant, and (ii) the Developer is not charging the Qualified Tenant more than Maximum Allowable Rent or, if the Qualified Tenant has an income above the Designated Affordability Level, subject to Section 4.5.3, the Developer is not charging the Qualified Tenant more than the rent due under the Over-Income Formula and otherwise satisfies the terms of this Covenant.

4.9 Annual Certification of Unit Inspection. Each year the Developer shall conduct a physical inspection of all Affordable Units in the Project Improvements and complete a Certification of Inspection for each Affordable Unit.

4.10 Replacement Reserves. Prior to the Developer's receipt of a Certificate of Occupancy for any Affordable Unit, the Developer shall establish replacement reserves for each Affordable Unit at commercially reasonable levels ("**Replacement Reserves**"). Such Replacement Reserves shall be deposited and maintained in an interest bearing account with a federally insured financial institution chosen by the Developer. Notwithstanding anything to the contrary, in the event that any of the Leasehold Mortgagees require a replacement reserve account in connection with a Leasehold Mortgage and such a replacement reserve account has been established at commercially reasonable levels, subject to District's prior written approval, then the requirements under this Section 4.10 with respect to replacement reserve accounts shall be satisfied.

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

- (a) the number and identification of the Affordable Units, by bedroom count, that are occupied;
- (b) the number and identification of the Affordable Units, by bedroom count, that are vacant;
- (c) for each vacant Affordable Unit, the manner in which the Affordable Unit became vacant (e.g., eviction or voluntary departure) and the progress of having the unit re-occupied;
- (d) for each occupied Affordable Unit, the names and ages of all persons in the Household, the Household size, the date of initial occupancy and total Annual Household Income as of the date of the most recent Certification of Income;

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

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

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

(h) an annual accounting of the Replacement Reserves, including funds added, any funds withdrawn, and the uses of the withdrawn funds;

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

(j) a copy of all forms, policies, procedures and other documents as may be reasonably requested by the Agency related to the Affordable Units.

The Annual Reports shall be retained by the Developer for a minimum of five years (5) after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that the Developer is providing a report to any agency within the District of Columbia government with content substantially similar to the content of the Annual Reports described in this Section 4.11, subject to Agency's prior written approval, then the reporting requirements under this Section 4.11 shall be satisfied upon Developer's delivery of such report to the Agency.

4.12 Confidentiality. Except as may be required by law, including, without limitation, the District of Columbia Freedom of Information Act of 1976, D.C. Code § 2-531 et seq., the Developer and the District shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report, unless otherwise required to do so by law.

4.13 Inspection Rights. In addition to the District's inspection rights contained in the Construction Covenant, the Agency or its designee shall have the right to inspect the Affordable Units, upon at least forty-eight (48) hours' advance notice to the Developer. The Agency or its designee shall have the right to inspect a random sampling of the Affordable Units to confirm the units are in compliance with applicable statutory and regulatory housing requirements. The Agency or its designee shall have the right to conduct audits of the Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

4.14 Certifying Authority. Developer may contract with a Certifying Authority to perform certain obligations contained herein. Developer's selection of a Certifying Authority shall be subject to the Agency's prior written approval, which approval shall not be unreasonable withheld, conditioned or delayed. Upon request by the Developer, the Agency shall complete its review of Developer's request for the proposed Certifying Authority and

provide a written response thereto within fifteen (15) Business Days after its receipt of the Developer's request.

ARTICLE V ENFORCEMENT AND REMEDIES

5.1 Event of Default. Each of the following shall constitute an “**Event of Default**” on the part of Developer:

(a) Developer defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Developer pursuant to this Covenant and such Events of Default expressly set forth in this Section 5.1), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional sixty (60) days for a total cure period not to exceed ninety (90) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;

(b) Developer enters into a lease of an Affordable Unit with an Affordable Tenant at a rental rate in excess of the maximum amount permitted by law;

(c) Developer knowingly enters into a lease of an Affordable Unit with a Household that is not a Qualified Tenant; and

(d) An Event of Default occurs under the Construction Covenant.

5.2 Remedies. If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

(a) If the Event of Default arises under Section 5.1(b), then all proceeds from such lease in excess of the maximum amount permitted hereunder shall be paid to the District;

(b) If the Event of Default arises under Section 5.1(c), then the Developer shall pay to the District an amount equal to twice the annual rental rate for a market rate unit comparable to the applicable Affordable Unit for every month that the Affordable Unit is not occupied by a Qualified Tenant; and

(c) The District may pursue any and all other remedies available at law and in equity.

5.3 Attorneys' Fees. If the District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-

applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation. In all events, the liability hereunder of Developer shall be limited to its respective interest in the Property.

ARTICLE VI COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Unit and shall run with the land for the Term. The rights and obligations of the District and the Developer and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; *provided however* that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Developer hereunder shall be retained by District, or such designee of the District as the District may so determine. No sale, transfer or foreclosure shall affect the validity of this Covenant.

ARTICLE VII MORTGAGEES

7.1 Mortgages Subordinate. All Mortgages shall be subject and subordinate to this Covenant.

7.2 Default or Foreclosure under Mortgages or Deeds of Trust.

7.2.1 Notice of Uncured Delinquency or Default. All financing documents shall provide that a Mortgagee shall provide to the Agency written notice of any uncured delinquency or other uncured default under the deed of trust or mortgage and that the Agency shall have the right, but not the obligation, to designate an agency to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Agency of such notice.

7.2.2 Foreclosure Proceedings.

(a) In the event any Mortgagee intends to initiate a foreclosure proceeding under its mortgage or deed of trust, the Mortgagee shall first notify the Agency of its intent to do the same in writing, at least ninety (90) calendar days prior to the initiation of any foreclosure action, and shall include in its notice the amount of the Developer's outstanding financial obligations to such Mortgagee as of the date of the notice (the "**Foreclosure Notice**"). A Mortgagee who has initiated foreclosure proceedings on a debt secured by a Mortgage shall notify the Agency in writing not later than sixty (60) days prior to the date of the foreclosure sale.

(b) If the Mortgagee is the successful purchaser at a foreclosure sale conducted by or at the behest of a Mortgagee, then prior to the reselling of the Property, the Agency or its designee shall have the right to purchase the Property for the amount secured by the Mortgage. The Mortgagee shall notify the Agency of the amount it is owed in writing ("**Mortgage Notice**") and the Agency shall have ninety (90) days from the date of receipt of

the Mortgagee Notice to notify the Mortgagee that it, or its designee, intends to purchase the Property. In the event the Agency elects not to purchase the Property, or fails to notify the Mortgagee of its election to purchase within ninety (90) days of the date of the Mortgagee Notice, then the Mortgagee shall have the right to sell the Property to a third party, subject to this Covenant.

(c) In the event of foreclosure, this Covenant shall not be released, and the Mortgagee or other Person who takes title to the leasehold estate through a foreclosure sale, shall be bound to the obligations contained herein.

ARTICLE VIII AMENDMENT OF COVENANT

Neither this Covenant, nor any part hereof, can be amended, modified or released other than by an instrument in writing executed by a duly authorized official of the District of Columbia on behalf of the District, signed by the District of Columbia Office of the Attorney General for legal sufficiency, and by a duly authorized representative of the Developer. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE IX TERM OF COVENANT

The term (“**Term**”) of this Covenant shall commence as of the Effective Date and shall run for a period of thirty-five (35) years from the Effective Date, unless released.

ARTICLE X NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to District at the following addresses, or to such other persons or locations as the District may designate in writing to the Developer from time to time:

DISTRICT:

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

With a copy to:

The Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005

Attn: Deputy Attorney General

AGENCY:

District of Columbia
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20020
Attn : Director

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses, or to such other persons or locations as the Developer may designate in writing to the District from time to time:

DEVELOPER:

[_____]

With a copy to:

[_____]

LIMITED PARTNERS:

[_____]

With a copy to:

[_____]

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

**ARTICLE XI
MISCELLANEOUS**

11.1 Law Applicable; Forum for Disputes. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Each of Developer and the District irrevocably submits to the jurisdiction of (i) the courts of the District of Columbia and (ii) the United States District Court for the District of Columbia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of the District and Developer irrevocably and

unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia, and hereby further waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11.2 Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

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

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

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

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

11.7 Developer's Limitation of Liability.

(a) Developer shall be responsible for the performance of all obligations contained in this Covenant. Developer may contract with a Certifying Authority to perform certain obligations contained herein but shall remain liable for the performance of such obligations. In the event the Certifying Authority violates any provisions of this Covenant, the Developer shall provide written notice of such violation to the Agency and shall correct such violation or cause the Certifying Authority to correct the violation, both within a reasonable cure period approved by the Agency. If the violation is not cured within the approved reasonable cure period, the Agency shall have the right to implement Article V.

(b) Provided that the Developer has exercised reasonable due diligence in the performance of its obligations and duties herein, the Developer shall not be liable, in the event a tenant submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, the Developer shall be liable if the Developer has actual knowledge that a tenant submitted

falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

11.8 District and Agency Limitation of Liability.

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

(b) The Developer shall be solely responsible for certifying the Annual Household Income for tenants of the Affordable Units. The Agency's referral of self certified prospective tenants shall not be deemed as the Agency's acceptance of such tenant as a Qualified Tenant.

**ARTICLE XII
LIHTC PROVISIONS**

12.1 All Units are LIHTC Units. The District acknowledges that all of the Residential Units are also LIHTC Units that are subject to the Code and the Residential Units will be operated in accordance with the Code, including without limitation, with respect to establishing rents.

12.2 LIHTC Compliance. During the LIHTC Restriction Period, it is expressly understood and agreed that in no event shall the requirements or imposition of any restrictions under this Covenant supersede or preclude compliance with the Code should they be in conflict. In the event the requirements in this Covenant are more restrictive than or not addressed in the applicable Code requirements, then the requirements of this Covenant shall govern, provided that compliance with the same shall not cause Developer to violate the applicable Code requirements.

12.2 Rights of Tax Credit Investor. In the event of a default under this Covenant by Developer, District shall provide notice to the Limited Partners at the same time and in the same manner as provided to Developer, and the Limited Partners shall have the option (but shall not have any obligation) to cure any such default during the period which Developer has to cure such default, by making payment or doing such other act or thing as may be necessary or proper; provided that, in the case of a default which is not a monetary default and is not reasonably susceptible of being cured with due diligence within the later of thirty (30) days after the Limited Partners' receipt of notice or the expiration of Developer's cure period, if applicable, Limited Partners shall have the option (but shall not have any obligation) to commence the cure within such original cure period and thereafter diligently pursues and completes such cure within ninety (90) days. District shall accept all payments made within such cure period and all acts and things done within such cure period by Limited Partners as though the same had been timely done or performed by Developer so that they

shall be as effective to prevent a default as the same would have been if timely done or performed by Developer. The address for any notices to the Limited Partners is set forth in Article X and the address for each Limited Partner may be changed in accordance with Article X.

[Signatures are contained on the following pages.]

[Signature page for Affordable Housing Covenant]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

DEVELOPER:

[_____]

By: _____

Name:

Title:

District of Columbia)
) ss
)

On the ____ day of _____, 201_, before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Witness my hand and notarial seal this ____ day of _____, 201_.

Notary Public

My Commission Expires:

[An additional signature is contained on the following page.]

[Signature page for Affordable Housing Covenant]

DISTRICT:

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name:
Title:

District of Columbia)
) ss
)

On the ____ day of _____, 201_, before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Witness my hand and notarial seal this ____ day of _____, 201_.

Notary Public

My Commission Expires:

EXHIBIT A

[Legal Description of Property]

EXHIBIT B
[Affordable Unit Index]

EXHIBIT C

[Affordable Rental Housing Lease Rider]

EXHIBIT C
CBE AGREEMENT

**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 **EASTBANC-W.D.C. PARTNERS, LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (the "Developer").

RECITALS

A. Pursuant to a Land Disposition and Development Agreement to be entered between the Developer and the **DISTRICT OF COLUMBIA**, Developer intends to provide for the development of a New DC Public Library Branch along with a residential condominium building on Square 37; and a new DC Fire Station along with a residential rental building on Square 50 (the "Project").

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

C. Capitalized terms not defined herein shall have the meaning assigned to them in the Land Disposition and Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and the Developer agree, as follows:

**ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

Section 1.1 CBE Utilization. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the "Act") (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a "CBE") in connection with the predevelopment and development phases of the Project, including, but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the Adjusted Development Budget (the "CBE Minimum Expenditure"). As detailed in Attachment 1 hereto, the Adjusted Development Budget is **\$107,761,950**. The CBE Minimum Expenditure is therefore **\$37,716,683**.

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District ("Expenditure Period"). If within three (3) years of the execution of this Agreement the Developer has not achieved the CBE Minimum Expenditure and has not obtained a final

Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement. If the District issues additional loans, land disposition and development agreements or any other agreements on behalf of Developer or Developer's successors or assigns before expiration of the Expenditure Period, DSLBD may require Developer to enter into a separate CBE Utilization Agreement that specifies the time period for meeting the CBE Minimum Expenditure related to that new transaction.

Section 1.3 Adjustments to the Adjusted Development Budget. If the Adjusted Development Budget increases or decreases by an amount greater than 5% ("Adjustment"), Developer will notify DSLBD and ODCA, defined herein, in writing, within ten (10) business days, of any such Adjustment. The CBE Minimum Expenditure and Contingent Contribution (if applicable as defined herein) shall be automatically increased in the case of an increase in the Adjusted Development Budget or decreased in the case of a decrease in the Adjusted Development Budget, by an identical percentage of the Adjustment. A modified Attachment 1 must accompany each notice of Adjustment to the Adjusted Development Budget.

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 ("DBEs") 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), (2), and (3) 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 participation on the mixed-use projects. 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 Project, Developer or its general contractor/construction manager shall (as set forth in Section 4.1) periodically publish notices in any of the following newspapers primarily serving the District of Columbia: *The Current Newspapers*, *The Washington Informer*, the *Washington Afro-American*, *Common Denominator*, *Washington Blade*, *Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities in connection with the Project. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.