

**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 first obtaining the written consent of 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. 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 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 month and to date;
- (iv) the certification categories for each vendor/contractor;
- (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.

These reports shall be submitted to DSLBD and ODCA no later than thirty days (30) after the end of each calendar-year quarter. The 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. These reports shall also describe the Developer's outreach efforts (if any) during the reporting period, to identify CBEs and/or encourage them to bid on or otherwise apply to provide labor, services, goods, and materials for use in the construction or operation of the development project. Companies that may be eligible for certification, but are not yet certified, or whose certification is pending with DSLBD shall not be included in these reports unless and until the company is certified. Further, only amounts expended after a company is certified shall be counted towards the CBE Minimum Expenditure. Concurrently with submission of the

West End Parcels CBE AGREEMENT

quarterly reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5.

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 the Office of the District of Columbia Auditor ("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.

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**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

West End Parcels CBE AGREEMENT

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 will publish a public notice in a 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 30 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.

ARTICLE V
EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION

Section 5.1 LSDBE Equity Participation and Development Participation Requirements:

- (i) **Minimum LSDBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that businesses certified pursuant to the Act, as local, small and disadvantaged business enterprises (“LSDBEs”)¹, shall receive no less than twenty percent (20%) in sponsor Developer equity participation (“Equity Participation”) and no less than twenty percent (20%) in development participation (“Development Participation”) in the Project, in accordance with Section 2349a of the Act, D.C. Official Code § 2-218.49a;
- (ii) **Pari Passu Returns for LSDBE Equity Participant(s).** Developer agrees that the LSDBE 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 LSDBE 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 LSDBE Equity Participant’s equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;
- (iii) **LSDBE Equity Participation maintained for duration of Project.** Developer agrees that the LSDBE 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) **LSDBE Equity Participant’s Risk Commensurate with Equity Position.** The LSDBE 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 LSDBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that LSDBE partners on development

¹ For purposes of this Section, LSDBEs includes local, small or disadvantaged business enterprises, but does not require all three certifications.

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 LSDBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all LSDBE 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 LSDBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate LSDBE partners. LSDBE partners of Developer shall not be precluded from selling services back to Developer. The LSDBE partners shall participate in budget, schedule, and strategy meetings. LSDBE 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 5.3 No Changes in LSDBE Equity Participation and Development Participation.

- (a) 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
- (b) 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 5.4 Closing Requirements for LSDBE 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 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 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 5.5 LSDBE Equity Participation and Development Participation Restrictive Covenant.

- (a) 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;
- (b) 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:
 - (i) The LSDBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and
 - (ii) The LSDBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor developer equity in the Project throughout its development.

Section 5.6 LSDBE 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 as determined by DSLBD. The reports shall be submitted in accordance with Section 3.2 of this Agreement and shall include information regarding:

- (a) Changes in ownership interest of the owners/partners;
- (b) Additions or deletions of an owner/partner;
- (c) Changes in the legal status of an existing owner/partner;
- (d) Changes in the percentage of revenue distribution to an owner/partner;
- (e) A description of team member activities; and
- (f) The amount of development fees paid to each team member, participant, partner, or owner.

Section 5.7 Article V of this Agreement Controls.

(a) 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 LSDBE Equity Participant(s) and Development Participant(s).

(b) 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 LSDBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

(c) As it relates to or affects the LSDBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned LSDBE 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.

**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 expenditures. If Developer's actual 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 \$9,429,171.

- (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 \$9,429,171.
- (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.*, \$1,885,834.
- (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