

“**Compliance Form**” is defined in Section 2b.5(b).

“**Construction Consultant**” is the construction consultant retained by Developer for the Project.

“**Construction Drawings**” means the plans and drawings of the Project, which have been prepared and reviewed and approved by the District, if required, pursuant to the Agreement, and any modifications thereto.

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

“**DDOE**” means the District of Columbia Department of the Environment.

“**Deed**” is the special warranty deed of even date herewith conveying the District Property to Developer.

“**Default Rate**” means the annual rate of interest that is the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Law.

“**Deposit**” shall mean the letters of credit in the aggregate amount of Five Hundred Thousand Dollars (\$500,000.00) delivered to District by Developer on or before the Effective Date.

“**Deputy Mayor**” shall mean the Deputy Mayor for Planning and Economic Development of the District of Columbia, and his or her authorized delegee.

“**Developer**” means EastBanc-W.D.C. Partners, LLC, and its successors and assigns.

“**Developer Improvements**” shall mean all Improvements that are not Public Improvements.

“**Developer Property**” is defined in Recital R-2.

“**Developer’s Agents**” mean Developer’s agents, employees, consultants, contractors, and representatives.

“**Development and Completion Guaranty**” is that guaranty of even date herewith, by and between Guarantor(s) and District, which guaranties Developer’s obligations identified therein and herein.

“**Disapproval Notice**” is defined in Section 2a.1.4.

“**Disposal Plan**” is defined in Section 2b.2.3.

“**District Property**” is defined in Recital R-2

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

“**DOL**” is the United States Department of Labor.

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

“**Environmental Claims**” is defined in Section 2b.2.1.

“**Environmental Laws**” means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“**Event of Default**” is defined in Section 9.1.

“**Final Certificate of Completion**” is defined in Section 2b.8.2(a).

“**Final Completion**” means the District’s written confirmation following Substantial Completion of Construction of: (i) the completion of the Punch List Items or, at District’s sole and absolute discretion, escrow by the Developer of 150% of the reasonably anticipated cost to complete such Punch List Items and receipt of a permanent Certificate of Occupancy for the New Fire Station, New Library and the Affordable Units; (ii) the close-out of all construction contracts for the Improvements other than for the Internal Market-Rate Improvements; (iii) the payment of all costs of constructing the Improvements and receipt by District from Developer of copies of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Improvements other than for the Internal Market-Rate Improvements; and (iv) the receipt by District of a certification by Developer of the items in clauses (i) through (iii) of this definition. For the purposes hereof, if all of the requirements of (i) through (iv) have been met but if the Internal Market-Rate Improvements have not been completed, Final Completion shall be deemed to have been achieved hereunder. If the Improvements on Square 37 and Square 50 are built on different schedules, “Final Completion” as to one may be achieved before the other.

“**Fire Station Work Agreement**” shall mean that agreement by and between the District of Columbia Fire and Emergency Medical Services Department and _____, dated _____, which shall govern, together with this Covenant, the construction of the New Fire Station.

“First Source Agreement” is that agreement between Developer and the DOES executed prior to the Effective Date, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93 and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

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

“Governmental Authority” shall mean the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over or under the Project or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.

“Guarantor(s)” shall mean [_____] and any substitute guarantor(s) pursuant to Section 2b.8.2.

“Guarantor Submissions” shall mean unaudited financial statements (certified by such Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statements, other financial reports, and other financial information as District may reasonably request, together with a summary of such Guarantor’s, or proposed guarantor’s, other guaranty obligations and the other contingent obligations of such Guarantor, or proposed guarantor (in each case, certified by such Guarantor, or proposed replacement Guarantor, or an officer of such Guarantor, or proposed guarantor as being true, correct and complete).

“Hazardous Materials” means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), 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, and any other material or substance defined as a “hazardous substance,” “hazardous

material,” “hazardous waste,” “toxic materials,” “contamination,” or “pollution” within the meaning of any Environmental Law.

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

“**Improvements**” means the structures, landscaping, hardscape, and improvements to be constructed or placed on the West End Property in accordance with the Approved Plans and Spec; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term “Improvements” as used in this Covenant. If the Improvements on Square 37 and Square 50 are constructed on different schedules, “Improvements” may refer to one or the other as the context requires.

“**Indemnified Parties**” is defined in Section 2b.2.1.

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

“**Intermediate Construction Completion**” means Developer has completed construction of the below-grade portion of the Improvements, in accordance with the Approved Plans and Specs and this Covenant, so that construction of all above-grade portions of the Public Improvements may commence in accordance with the Approved Plans and Specs. Intermediate Construction Completion may occur as to the below-grade portion of the Improvements on either of Square 37 or Square 50 separately.

“**Internal Market-Rate Improvements**” shall mean work done or to be done in the interior portion of any Market-Rate Units, the parking for Market-Rate Units and the retail space (including the parking for such retail space).

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

“**Library Board**” shall mean the District of Columbia Board of Library Trustees.

“**Library Work Agreement**” shall mean that agreement by and between the D.C. Public Library and _____, dated _____, which shall govern, together with this Covenant, the construction of the New Library.

“**Market-Rate Unit**” is each Residential Unit to be developed, sold, and used in the Project that is not an Affordable Unit.

“**Material Change**” means (i) any change in size or design from the Approved Plans and Spec affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, or a five percent (5%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specs; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specs; (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specs, to the extent such changes affect the New Library, New Fire Station and/or the Affordable Units; (v) in the case of Affordable Units only, any change in unit location, number of units by more than ten percent (10%), type, unit size by more than twenty percent (20%), or level of interior finish, from the Approved Plans and Specs; and (vi) in the case of the New Library and New Fire Station, any change from the New Library Plans and Specifications and New Fire Station Plans and Specifications, respectively, including any changes to parking dedicated thereto.

“**Member**” means any Person with an ownership interest in Developer.

“**Milestone**” shall mean each event identified in the Schedule of Performance.

“**Mortgage**” means a mortgage, deed of trust, mortgage deed, or other instrument as are commonly given to secure advances of funds on real estate and leasehold estates under the laws of the District of Columbia.

“**New Library Plans and Specifications**” shall mean the plans and specifications for the New Library as approved by the Library Board.

“**New Fire Station Plans and Specifications**” shall mean the plans and specifications for the New Fire Station as approved by the Chief.

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

“**Outside Completion Date**” shall mean the applicable Outside Completion Date for each Milestone in the Schedule of Performance.

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

“**Performance Letters of Credit**” are those letters of credit in the aggregate amount of Five Hundred Thousand Dollars (\$500,000) that Developer delivered to District in accordance with

the Agreement and any Replacement Letter of Credit, in order to insure Developer's performance of its obligations under this Covenant.

"Permits" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from Governmental Authorities (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction and occupancy of the Project in accordance with the Approved Plans and Specs and this Covenant.

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

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

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

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

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

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

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

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

“Project” is defined in Recital R-4.

“Project Lender” means an Institutional Lender that holds a loan secured by a Project Mortgage.

“Project Mortgage” shall mean a Mortgage that is recorded against the District Property or Developer Property, or a portion thereof, and secures a loan held by a Project Lender that provides Developer financing to develop and construct the Project, excluding the New Library and New Fire Station.

“Pro Rata Allocation” is defined in Section 2b.1.4.

“Public Improvements” shall mean the New Library, the New Fire Station, the Affordable Units and any parking spaces associated with the foregoing.

“PUD Approval” is defined in Recital R-4.

“Punch List Items” mean the minor items of work to be completed or corrected prior to final payment to Developer’s general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Approved Plans and Specs.

“REA” shall mean the Reciprocal Easement Agreement of even date hereof, between District and Developer, governing the exterior and grounds maintenance, operation, insurance and rebuilding obligations of the Project, including the New Library and the New Fire Station (the **“REA”**).

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

“Replacement Letter of Credit” is a letter of credit issued by an Acceptable Bank in the same form as the Performance Letters of Credit, which Developer shall deliver to District pursuant to Section 2b.8.3.

“Residential Sale” means the sale of a single Residential Unit to any one purchaser.

“Residential Unit” is any unit constructed as part of the Project to be developed, sold, leased and used for residential purposes, including all Affordable Units and Market-Rate Units.

“Retained District Property” means, collectively, air rights in which the New Library will be constructed in accordance with the New Library Plans and Specifications, (ii) air rights in which the New Fire Station will be constructed in accordance with the New Fire Station Plans and Specifications, and (iii) such easements, covenants and other rights as are necessary or convenient for the support and operation of the New Library and the New Fire Station, including without limitation an easement to provide parking for the New Fire Station and the New Library, respectively.

“Schedule of Performance” means that schedule of performance attached as Exhibit C.

“**Second Notice**” is defined in Section 2a.1.1.

“**Site Preparation Costs**” is defined in Section 2a.3.

“**Space Lease**” shall mean any lease of a portion of the Improvements in the ordinary course of business, and any subsequent amendments or modifications thereto, which lease shall be subject and subordinate to this Covenant.

“**Substantial Completion of Construction**” means (i) Developer has completed construction of the Improvements, exclusive only of Punch List Items and any Internal Market-Rate Improvements, in accordance with the Approved Plans and Specs; (ii) Developer’s general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items and payment for the Internal Market-Rate Improvements; (iii) Developer has provided District with a copy of the Certificate of Substantial Completion; and (iv) a conditional Certificate of Occupancy (subject only to future completion of the Punch List Items and, if applicable, the Internal Market-Rate Improvements) has been issued for the New Fire Station, New Library and the Affordable Units pursuant to 12 DCMR § 110.4.2.

“**Transfer**” means any sale, assignment, conveyance, lease, or other transfer of the District Property, the Improvements, or the membership interests of Developer, or any contract or agreement to do the same.

“**West End Property**” means, collectively, the District Property, Developer Property and District Retained Property.

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

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

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

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

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

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

1.8 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant. In the event of any conflict between the Exhibits or the Schedules and this Covenant, this Covenant shall control. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. This Covenant constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof except as set forth in the Agreement.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including but not limited to.”

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

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

1.12 RECORDATION. It is the intent of the Parties to record this Covenant in the Land Records, and the Developer’s interest in the Property shall be subject and subordinate to this Covenant, whether this Covenant is recorded before or after the Deed.

1.13 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in

this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

ARTICLE IIa EARLY STAGE DEVELOPMENT COVENANTS

2a.1 CHANGES TO APPROVED PLANS AND SPECIFICATIONS

2a.1.1 Generally. District, meaning for purposes of this Section 2a.1, the particular office, agency or instrumentality having the right to approve or disapprove in the particular instance, shall use good faith efforts to complete its review of each submission by Developer and respond to any request for an approval or consent under this Section 2a.1 and provide a written response thereto, within twenty (20) days after its receipt of the same. If the District does not approve such submission, the District will issue a Disapproval Notice pursuant to Section 2a.1.4. If the particular office, agency or instrumentality does not respond in writing within the twenty (20) days, Developer shall send that office, agency or instrumentality a second notice (“**Second Notice**”) that shall instruct that office, agency or instrumentality that it has ten (10) days to respond in writing. Upon failure to respond within the ten (10) days after its receipt of the Second Notice, Developer may request an approval by the Deputy Mayor which will be a binding approval.

2a.1.2 Modifications Prior to Commencement of Construction. Prior to the Commencement of Construction, Developer shall not make any Material Change to the Approved Plans and Specs without District’s prior written approval, such approval to be granted or withheld in District’s sole discretion; provided, however, that if any such Material Change to the Approved Plans and Specs is required to comply with any Applicable Law, District’s consent shall not be unreasonably withheld, conditioned or delayed. Prior to the Commencement of Construction, any change to the Approved Plans and Specs that is not a Material Change shall be subject to District’s approval, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that District’s consent shall not be required for (i) any change that is not a Material Change and that only affects the interior portion of any Market-Rate Units, the parking for the Market-Rate Units or the retail space (including any parking for such retail space) on Square 37; or (ii) any change to Approved Plans and Specs relating to any portion of the Project that is not a Public Improvement, does not involve the colors or exterior finishing materials substantially affecting architectural appearance of the Improvements and that will not have a material effect on the Public Improvements. District, meaning for purposes of this Section 2a.1.2, the particular office, agency or instrumentality having the right to approve or disapprove in the particular instance, shall use good faith efforts to complete its review of each submission by Developer and respond to any request for an approval or consent under this Section 2a.1.2 and provide a written response thereto, within ten (10) days after its receipt of the same. If the District does not approve such submission, the District will issue a Disapproval Notice pursuant to Section 2a.1.4. If the particular office, agency or instrumentality does not respond in writing within the ten (10) days, Developer shall send that office, agency or instrumentality a Second Notice that it has five (5) days to respond in writing. Upon failure to respond within the five (5) days after its receipt of the Second Notice, (i) in the case of a