

**EXHIBIT E**  
Form of Construction and Use Covenant

**CONSTRUCTION AND USE COVENANT**

THIS CONSTRUCTION AND USE COVENANT (the “**Covenant**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) \_\_\_\_\_, and its successors and assigns (the “**Developer**”).

**RECITALS**

R-1. District owns the real property located at 1336 8<sup>th</sup> Street, NW in the District of Columbia and known for taxation and assessment purposes as Lot 68 in Square 399 (the “**Property**”), which Property is more fully described in Exhibit A.

R-2. District and Developer entered into a Land Disposition and Development Agreement, effective \_\_\_\_\_, 201\_ (the “**Agreement**”), pursuant to which District agreed to convey the Property by deed and Developer agreed to set forth their agreements regarding the development of the property as more particularly set forth in this Covenant.

R-3. Upon execution and delivery of this Covenant by District and Developer at the Closing set forth in the Agreement, the parties shall record this Covenant in the Land Records of the District of Columbia as an encumbrance on the Property.

R-4. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents.

R-5. As required by the Agreement, Developer, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Construction Drawings and the covenants contained herein.

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

**ARTICLE I  
DEFINITIONS AND MISCELLANEOUS PROVISIONS**

1.1 **DEFINITIONS.** For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular. Any capitalized term used herein but not defined herein shall have the meaning ascribed such term in the Agreement.

“**Affiliate**” means with respect to any Person (“**first Person**”) (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or

(iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

“**Affordable Housing Covenant**” has the meaning given in the Agreement.

“**ADUs**” means an affordable dwelling unit developed in connection with the Project.

“**Agreement**” is defined in the Recitals.

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

“**Approved Construction Drawings**” are the Developer’s Construction Drawings for the Project that were approved by District pursuant to the terms of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

“**Architect**” means Shalom Baranes Associates, PC or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District, which approval shall not be unreasonably withheld, conditioned or delayed.

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

“**CBE Agreement**” is that agreement between Developer and DSLBD governing certain obligations of Developer under D.C. Official Code §§ 2-218.01 *et seq.* and its implementing regulations with respect to the Project.

“**Certificate of Final Completion**” is defined in Section 2.3.4.

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

“**CityMarket at O**” means the mixed-use project constructed by Affiliates of Developer and located across the street from the Property in the Shaw neighborhood.

“**Commencement of Construction**” means the time at which Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for demolition, if any, and (iv) obtained any required Permits for demolition and sheeting and shoring, and commenced demolition, if any, upon the Property pursuant to the Approved Construction Drawings. For purposes of this Covenant, the term “Commencement of Construction” does not mean site exploration, borings to determine

foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for development of the Project thereon or the investigations of environmental conditions, but “Commencement of Construction” shall include any material removal of Hazardous Materials from the Property by Developer in anticipation of excavation for construction.

“**Community Benefits**” is defined in the Agreement.

“**Construction Consultant**” is defined in Section 2.1.2.

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

“**Construction Drawings**” has the meaning given such term in the Agreement.

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

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

“**Debt Financing**” shall mean the aggregate financing or financings to be obtained by Developer from one or more Institutional Lenders to fund the costs set forth in the Final Project Budget, other than any Equity Investment.

“**Deed**” means the special warranty deed dated the date hereof conveying the Property to Developer recorded in the Land Records.

“**Developer**” is defined in the Preamble.

“**Developer’s Agents**” means the Developer’s employees, consultants, contractors, subcontractors and representatives.

“**Developer’s Certificate of Completion**” means that certificate provided by Developer to District upon Substantial Completion, as required under Section 2.3.3.

“**Development and Completion Guaranty**” is that certain Development and Completion Guaranty executed by the Guarantor(s), which binds the Guarantor(s) to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Covenant.

**“Development Plan”** means Developer’s plan to construct a building containing approximately seventy-six (76) Residential Units (approximately 73,000 square feet), of which approximately five (5) will be market rate townhome Residential Units (approximately 7,200 square feet), thirty percent (30%) will be ADUs (½ of which will reserved for households with AMI levels at or below fifty percent (50%) and ½ of which will be reserved for households with AMI levels at or below eighty percent (80%)), and approximately forty-eight (48) will be market rate Residential Units; approximately 5,400 square feet of ground floor retail space; approximately 1,500 square feet of space allocated to the Archdiocese for use by the Immaculate Conception Catholic Church as a parish hall; and an underground parking garage with approximately twenty-five (25) parking spaces on one level.

**“Disapproval Notice”** is defined in Section 2.4.2.

**“District Delay”** is a delay caused by District resulting from a specific, identifiable act or omission by District (as defined in this Covenant) which materially prevents Developer from complying with this Covenant, but excluding any delay by District in reviewing any plan or document where there is a “deemed approval” provision connected to such review.

**“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.

**“EB-5 Financing”** means (a) any financing provided by an EB-5 Lender, or (b) any financing that is comparable and/or supplemental to the EB-5 financing obtained by affiliates of Developer in connection with the redevelopment of CityMarket at O.

**“EB-5 Lender”** means (a) an entity affiliated with the DC Regional Center, which is a federally approved center pursuant to the EB-5 immigrant visa program; (b) an entity affiliated with any other US Customs & Immigration Service-designated regional center that has closed more than \$125 million of EB-5 Financing in Washington, DC in the past three (3) years; or (c) any other entity providing EB-5 Financing that is approved by the District, in its sole discretion.

**“Effective Date”** is defined in the Preamble.

**“Environmental Claims”** is defined in Section 3.3.1.

**“Environmental Laws”** means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment,

storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

**“Equity Investment”** shall mean all funding provided by any Person or Members with a direct or indirect ownership interest in Developer that is required for the development and construction of the Project exclusive of any Debt Financing.

**“Event of Default”** is defined in Section 5.1.1.

**“Final Completion”** means following Substantial Completion: (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from all major manufacturers, major suppliers, major subcontractors (for purposes of this Covenant, major manufacturers, major suppliers and major subcontractors shall be those entities with contracts in excess of \$500,000), general contractors, and all other Persons furnishing supplies or labor in connection with the Project with contracts in excess of \$500,000; (iv) Developer has provided District with a certification from the general contractor certifying that the Project has been constructed in accordance with the Approved Construction Drawings and the Permits; (v) Developer has provided District with a set of as-built drawings; and (vi) Developer has provided District a copy of all Certificates of Occupancy for the Property; provided, however, Final Completion may occur in advance of the installation of tenant improvements in the Retail Portion.

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

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

**“Flat Units”** means all Residential Units constructed as a part of the Project except the Townhome Units.

**“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, 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, 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 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 avoidable by Developer, Developer’s Agents, or its Members or District in the event 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 Developer’s financial condition; (B) changes in market conditions such that development of the Project is 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, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

**“Green Building Act”** means the Green Building Act of 2006, D.C. Official Code § 6-1451.01, *et seq.*, as amended, and the regulations promulgated thereunder.

**“Guarantor”** shall mean \_\_\_\_\_ and any successor(s) approved by District pursuant to Section 2.10.1. Guarantor must have sufficient net worth and liquidity to satisfy its obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, such Person’s obligations under other guaranties and the other contingent obligations of such person.

**“Guarantor Submissions”** shall mean (a) the last three years of financial statements and tax returns if the Guarantor is an individual and (b) the last three years of financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports if the Guarantor is an entity, and such other financial information as District may reasonably request to determine whether such Person has sufficient net worth and liquidity to satisfy the obligations under the Development and Completion Guaranty, together with a summary of such Person’s other guaranty obligations and the other contingent obligations of such Person (in each case, certified by such Person or an officer of such Person as being true, correct and complete in all material respects).

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

"Indemnified Parties" is defined in Section 3.3.1.

"Institutional Lender" shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a "REMIC" under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees' welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than \$1 Billion in assets; (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least \$1 Billion; (xiv) an EB-5 Lender providing EB-5 Financing; or (xv) a charitable organization regularly engaged in making loans secured by real estate.



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

**“Material Change”** means (i) any change in size or design from the Approved Construction Drawings substantially affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or a diminution or increase of square footage in the Project in excess of five percent (5%); (ii) any changes in exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Construction Drawings; (iii) any change in number of parking spaces by ten percent (10%) or more from the Approved Construction Drawings, (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 Approved Construction Drawings; (v) any change that reduces the number of ADUs; or (vi) any change that reduces the total residential square footage of the Project by more than ten percent (10%); (vii) any material reduction in the level of interior finishes below market rate standards from the Approved Construction Drawings as it relates to the ADUs; and (viii) any change requiring an amendment to the PUD or approval by the Zoning Commission.

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

**“Mortgage”** shall mean a mortgage, deed of trust, or other security instrument that is recorded against the Property (but no other real property) and secures a loan that provides financing to acquire the Property and to develop and construct the Project, and any refinancing of such a loan.

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

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

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

**“Principals of Roadside”** shall mean Richard Lake, Armond Spikell and Todd Weiss.

**“Prohibited Person”** shall mean any of the following Persons: (a) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (b) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of

1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (e) any Person suspended or debarred by HUD or by the District of Columbia government; or (f) any Affiliate of any of the Persons described in paragraphs (a) through (e) above.

**"Prohibited Uses"** shall have the meaning set forth in Section 3.1.3.

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

**"Project Component(s)"** shall mean, individually or collectively, the Retail Portion, the Townhome Units, the Flat Units, and the parking garage.

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

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

**"Punch List Items"** means 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 Construction Drawings.

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

**"Residential Units"** means the residential dwelling units to be constructed on the Property in accordance with the Agreement and this Covenant.

**“Retail Plan”** means the retail strategy and marketing plan that was submitted by Developer and approved by District prior to the Effective Date pursuant to the Agreement, and any modifications thereto approved by District.

**“Retail Portion”** means that portion of the Project that is to be used for retail purposes.

**“Roadside”** means Roadside Development LLC, a District of Columbia limited liability company.

**“Schedule of Performance”** means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, attached as Exhibit B hereto.

**“Second Notice”** means that notice given by Developer to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a “SECOND AND FINAL NOTICE”; (b) shall contain the following statement: “A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS [OR FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]”; and (c) be delivered in the manner prescribed in Article XI, in an envelope conspicuously labeled “SECOND AND FINAL NOTICE”.

**“Substantial Completion”** shall occur when: (a) Developer has obtained (i) a shell final for the Retail Portion of the Project, (ii) Certificates of Occupancy and other necessary approvals for the use and occupancy of the Residential Units (which District acknowledges may occur temporarily on a floor-by-floor, or unit-by-unit, basis) (which District acknowledges may be on a temporary basis), and (iii) a Certificate of Occupancy and other necessary approvals for the use and occupancy of the parking garage component of the Project (which District acknowledges may be on a temporary basis); (b) the Architect shall have executed an AIA Form G704 evidencing substantial completion of each Project Component listed in (a)(i)-(iii) (subject only to Punch List Items that do not interfere with the use and occupancy of the Project Component for its intended purposes) and stating that, in its professional opinion based on its inspections, the subject Project Component was constructed in compliance in all material respects with the Approved Construction Drawings; and (c) Developer has provided evidence satisfactory to the District that it has provided the Community Benefits in accordance with the time frames set forth in Section 7.10 of the Agreement.

**“Townhome Units”** means the two (2) story townhouses that constitute a portion of the Residential Units to be constructed as a part of the Project.

**“Transfer”** means any sale, assignment, conveyance, lease (but excluding space leases), trust, power, encumbrance or other transfer of the Property or the Improvements or of any portion of the Property or the Improvements, or of any interest in the Property or the Improvements, or any contract or agreement to do any of the same. As used in this Covenant, 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), whether related or unrelated, a majority of the membership or beneficial interest in Developer is sold, transferred, diluted, reduced or otherwise affected resulting in a change in Control of Developer such that Developer is no longer Controlled by two of the three Principals of Roadside; or (ii) in a single transaction or series of transactions, whether related or unrelated, a majority of the membership interests in Developer or in any Member of Developer is sold, transferred, diluted, reduced or otherwise affected (whether directly or indirectly) resulting in a change of Control of Developer such that Developer is no longer Controlled by two of the three Principals of Roadside; (iii) an assignment or transfer by operation of law occurs such that Developer is no longer Controlled by two of the three Principals of Roadside; or (iv) there is a substantial change in the participation of CBEs in the ownership or management of the Developer, which shall mean any change the result of which will be to alter the percentage of participation by CBEs from that previously presented to District, or a change that results in the loss of the CBE status.

“Use Covenants” means those covenants contained in Article III.

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

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

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

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

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

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

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and 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. Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default of its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure, and the periods allowed for the performance by the Party(ies) of such obligations(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure events continues to materially and adversely affect the performance by such Party of such obligations. The Party seeking the benefit of this Section 1.11 shall notify the other Party in writing within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced 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 such Force Majeure event and make commercially reasonable efforts to minimize the delay.

## ARTICLE II CONSTRUCTION COVENANTS

### 2.1 OBLIGATION TO CONSTRUCT PROJECT.

2.1.1 **Covenant to Develop and Construct.** Developer hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Construction Drawings, the Schedule of Performance and this Covenant. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act, and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Developer and completed by the outside dates therefor indicated in the Schedule of Performance.

2.1.2 **Construction Consultant.** On or before Commencement of Construction, Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by District (such approval to be deemed given if no response is provided by District within ten (10) Business Days after a request for approval), on such terms as District may approve, to: (a) report to District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (b) review and approve whether the construction of the Project is consistent with the requirements of the Construction and Use Covenant, and (c) review and report to District on District's issuance of the Certificate of Final Completion. Construction Consultant shall receive timely reports from the Architect and Developer, as necessary, and shall promptly report any issues or problems to District and Developer. Construction Consultant shall provide such certifications as are provided in the Construction and Use Covenant. Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in

the Final Project Budget. Any construction consultant engaged by the primary lender for supervision of construction of the Project shall be considered the "Construction Consultant" hereunder, provided that such construction consultant is reasonably acceptable to District, and provided further that such construction consultant agrees in writing with District to undertake the duties of Construction Consultant set forth in this Section 2.1.2.

## 2.2 PRE-CONSTRUCTION ITEMS.

2.2.1 **Issuance of Permits**. Developer shall have the sole responsibility for obtaining all Permits from the applicable agency within the District of Columbia government or other authority. Prior to the Effective Date, Developer has obtained all Permits for demolition, sheeting and shoring for the Project in accordance with the Approved Construction Drawings. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer.

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

## 2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS.

2.3.1 **Commencement of Construction; Schedule of Performance**. Subject to Force Majeure and District Delays, Developer agrees that it shall achieve Commencement of Construction within sixty (60) calendar days after Closing and diligently prosecute the development and construction of the Project thereafter in accordance with the Approved Construction Drawings and achieve Substantial Completion and Final Completion by the outside dates for each milestone as set forth on the Schedule of Performance. Developer shall deliver to District copies of all Permits required for Commencement of Construction at least five (5) Business Days prior to Commencement of Construction.

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

2.3.3 **Developer's Certificate of Completion**. Subject to Force Majeure and District Delays, Developer shall achieve Substantial Completion on or before the outside date indicated therefor on the Schedule of Performance. Promptly after Developer achieves Substantial Completion of the Project, Developer shall furnish District with a Developer's Certificate of

Completion, in which Developer states under oath that Developer has achieved each of the components of Substantial Completion of the Project, as defined herein.

2.3.4 **Certificate of Final Completion.** Subject to Force Majeure and District Delays, Developer shall achieve Final Completion on or before the outside date indicated therefor on the Schedule of Performance. Promptly after Developer achieves Final Completion, Developer shall notify District and certify, under oath, that Final Completion has been achieved. Following District's inspection of the Project and confirmation of its receipt of all of the documentation required by the definition of Final Completion to evidence the achievement of each of the components of Final Completion of the Project, as defined herein, District shall deliver to Developer a certificate ("**Certificate of Final Completion**") in recordable form confirming Developer's Final Completion of the Project.

## 2.4 MATERIAL CHANGES TO APPROVED CONSTRUCTION DRAWINGS.

### 2.4.1 **Material Change.**

(a) Developer shall not make or cause to be made any Material Changes to the Approved Construction Drawings without District's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, except those changes required by a governmental authority pursuant to subsection (b), below. If Developer desires to make a Material Change to the Approved Construction Drawings, Developer shall submit the proposed Material Change to District for approval. District agrees that it shall respond to any such request within ten (10) Business Days. Failure to respond within ten (10) Business Days after a Second Notice shall be considered a deemed approval. Any approved or deemed approved Material Change shall become part of the Approved Construction Drawings.

(b) District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Covenant) of any elements of Approved Construction Drawing that are required by any governmental authority; provided however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the governmental authority requiring such element or change and with the Architect, (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 deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. 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, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the applicable Approved Construction Drawing. Developer shall promptly notify District in writing of any changes required by a governmental authority whether before or during construction.

2.4.2 **Disapproval Notices.** If District issues a notice of disapproval to proposed Material Changes to Approved Construction Drawings ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Developer shall work together to resolve the

issues in a commercially reasonable and prompt manner. Developer shall revise the Material Change to address the objections of District and may resubmit the revised Material Change for approval. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

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

## 2.5 LABOR/EMPLOYMENT COVENANTS.

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

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;
- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and
- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.



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

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

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

(a) **Inspection of Site.** Upon reasonable advance notice written notice to Developer, District shall have the right to enter the Property from time to time, accompanied by a representative of Developer, and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Developer in a manner that will minimize any interference with construction of the Project. Developer understands that, District or its representatives will enter the Property for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Construction Drawings and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

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

(c) **Audit Rights.** Upon reasonable prior notice at any time prior to achievement of Final Completion, but not more than one (1) time in any twelve (12) month period unless Developer is found to be in material violation of any obligation imposed hereunder as a result of a prior audit, District shall have the right (at the cost of District unless Developer is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books, records, and corporate documents of Developer for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Reform Act of 2010, D.C. Official Code §§ 2-351.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

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

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

2.9.1 **Project Funding Plan.** Subsequent to District's approval of the Project Funding Plan, Developer shall not (a) materially modify the Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Project Funding Plan, or (c) use funds for the Project for any uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and (ii) any other persons required to approve use of Project funds, if any.

2.9.2 **Final Project Budget.** Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the requirement for District approval of material modifications to the Final Project Budget, Developer shall be permitted to, without District approval: (a) reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed seven and one-half percent (7.5%) of the total Final Project Budget; (b) reallocate budgeted funds as a result of non-Material Changes to the Approved Construction Drawings; and (c) reallocate budgeted funds between hard and soft costs (exclusive of any fees payable to Developer).

2.9.3 **Debt Financing.** From the date hereof until the District's issuance of the Certificate of Final Completion, Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to

be unreasonably withheld, conditioned or delayed, provided such Debt Financing or Mortgage shall: (i) secure a bona fide indebtedness to an Institutional Lender or such other lender reasonably approved by District, the proceeds of which shall be applied only to the costs identified in the Final Project Budget, including, without limitation, the costs incurred by Developer in connection with the provision of all Community Benefits; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to Developer be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage Loan, Developer shall, at least ten (10) Business Days prior to closing on such financing, submit to District such documents as District may reasonably request, including, but not limited, copies of:

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

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

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

The terms of this Section 2.9.3 shall terminate upon the District's issuance of the Certificate of Final Completion.

## 2.10 DISTRICT SECURITY FOR PERFORMANCE.

### 2.10.1 Development and Completion Guaranty.

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

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred, Developer shall, within ten (10) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Such replacement Guarantor(s) shall execute and deliver to District a Development and Completion Guaranty in the same form as originally delivered to District.

2.10.2 Obligation to Maintain Bonds. Developer or its general contractor, as applicable, shall maintain the payment and performance bonds required by the Agreement at all times until District's issuance of the Certificate of Final Completion.

**ARTICLE III  
USE COVENANTS**

3.1 **USE RESTRICTIONS.** The Property shall be used only for those uses permitted by Applicable Law and as set forth herein.

3.1.1 **Retail Plan.** The Retail Portion shall be leased by Developer to retail tenants in conformance with the Retail Plan approved by District pursuant to the Agreement.

3.1.2 **Prohibited Uses.** The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): laundromat, check cashing establishment, adult entertainment and drive-thru services.

3.1.3 **Documentation.** At any time prior to Final Completion, upon District's demand, Developer shall deliver to District, within ten (10) Business Days following such demand, a schedule of all leases executed with respect to the Retail Portion of the Project, if any, or a status update regarding Developer's activities in connection the leasing of the Retail Portion.

3.2 **NONDISCRIMINATION COVENANTS.**

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

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

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

3.2.4 **Solicitations for Employment.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified

applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

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

### 3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION.

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

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

the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

**ARTICLE IV**  
**TERM; RELEASE; SUBORDINATION OF LIENS AND MORTGAGES**

4.1 **TERM OF CONSTRUCTION COVENANTS.** The Construction Covenants and all other obligations hereunder except those referenced in Section 4.2, below, shall run with the land and otherwise remain in effect as to the Townhome Units and Flat Units until Substantial Completion of such Project Component is achieved and remain in effect as to the Retail Portion and the parking garage until Final Completion is achieved for all Project Components, including those Components that may have been previously released, at which time the Construction Covenants shall be deemed to be released and of no further force and effect as to such Project Component. At such time, Developer shall prepare and be entitled to, and District shall execute, a Release of such Construction Covenants from such Project Component in the form attached hereto as Exhibit D, to be recorded among the Land Records against the Property. Notwithstanding the foregoing, Developer may prepare, and District hereby agrees to execute, a Release of such Construction Covenants with respect to the each floor of Flat Units as Substantial Completion of such floor of Flat Units is achieved.

4.2 **TERM OF USE RESTRICTIONS AND OTHER COVENANTS.** The covenants contained in Section 3.1 and Section 3.2 shall run with the land, binding Developer and its successors and assigns for a period of fifteen (15) years from the Effective Date, unless otherwise provided herein or otherwise agreed to by the District in writing.

4.3 **RELEASE.** At the request of either party to this Covenant, and provided that there is no dispute as to the expiration of the term, the parties shall execute a Release. In such event, the requesting party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting party. The non-requesting party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting party shall promptly deliver an original executed Release to the requesting party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

4.4 **SUBORDINATION OF LIENS AND MORTGAGES.** All Mortgages and other liens affecting all or any portion of the Property shall be subordinate to this Covenant.

**ARTICLE V**  
**DEFAULT AND REMEDIES**

5.1 **EVENTS OF DEFAULT.**

5.1.1 Each of the following shall constitute an "Event of Default" on the part of Developer:

- (a) Developer defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;
- (b) Developer fails to perform a milestone by the applicable outside date therefor set forth in the Schedule of Performance, subject to Force Majeure and District Delays, which failure to achieve such milestone continues for more than sixty (60) days or, if such failure is incapable of being cured within sixty (60) days, such additional reasonable period of time as is needed to achieve such milestone, so long as Developer is in good faith proceeding to achieve such milestone as expeditiously as possible, but in no event longer than one hundred twenty (120) days; or
- (c) Developer shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

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

## 5.2 REMEDIES.

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

- (a) District may cure Developer's Event of Default at the reasonable cost and expense of Developer, after ten (10) Business Days' notice to Developer. Developer shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Developer within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid;

- (b) District may pursue specific performance of Developer's obligations hereunder;
- (c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief; and
- (d) District may require from the Guarantor the full and complete performance of any and all of Developer's agreements, obligations, and covenants contained in Article II, Section 3.1, Section 3.3, and Article VIII of this Covenant; and
- (e) with respect to an Event of Default under Section 5.1.1(b), District may exercise its right of reentry under the Deed.

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

## ARTICLE VI INSURANCE OBLIGATIONS

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

- (a) Property Insurance - After achieving Substantial Completion, Developer shall maintain property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance penalty.
- (b) Builder's Risk Insurance - During construction of the Project, if not otherwise provided in the Property insurance program, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors as named insureds as their interests may appear.
- (c) Automobile Liability and Commercial General Liability Insurance (Post-Commencement of Construction) - After the Effective Date, until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence and in the aggregate, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any



limitation on Developer's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

- (d) Workers' Compensation Insurance - After the Effective Date, until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Laws.
- (e) Professional Liability Insurance - During the development of the Project and for a period of no less than five (5) years thereafter, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.
- (f) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

6.2 GENERAL POLICY REQUIREMENTS. Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Developer hereby agrees to provide District with written notice, by overnight carrier or U.S. Certified Mail, return receipt requested, not less than thirty (30) days or as soon as practicable before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein. Further, the policies shall contain an agreement by the insurer to endeavor to provide written notice to District, by overnight carrier or U.S. Certified Mail, return receipt requested, not less than thirty (30) days or as soon as practicable before any material change, reduction in

coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

## **ARTICLE VII CASUALTY**

In the event of damage or destruction to the Project following the Effective Date, but prior to District's issuance of the Certificate of Final Completion, upon its receipt of insurance proceeds, Developer shall be obligated to promptly repair or restore the Project to the condition it was in prior to such casualty in conformity with the Approved Construction Drawings, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion. Developer shall thereafter proceed to complete construction of the Project in accordance with the terms of this Agreement. Notwithstanding anything in this Covenant to the contrary, District shall not issue the Certificate of Final Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

## **ARTICLE VIII INDEMNIFICATION**

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

## **ARTICLE IX COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

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

## **ARTICLE X AMENDMENT OF COVENANT**

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved for legal sufficiency, and by Developer. Any amendment to this Covenant that materially alters the

terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

## ARTICLE XI NOTICES

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

**TO DISTRICT:**

Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the General Counsel for the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attn: General Counsel

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:

**TO DEVELOPER:**

c/o Roadside Development LLC  
1730 Rhode Island Avenue, NW, Suite 512  
Washington, DC 20036  
Attention: Lauren Rabbitt Aiello

With a copy to:

Dantes Partners LLC  
701 Lamont Street, NW, Suite 11  
Washington, DC 20010  
Attention: Buwa Binitie

and

Debra D. Yogodzinski, Esq.

Rogers Yogodzinski LLP  
1129 20th Street, NW, Suite 300  
Washington, DC 20036

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

## ARTICLE XII TRANSFER

12.1 **Transfer Prior to Certificate of Final Completion.** 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, Developer shall not make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Developer shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request.

12.2 **Transfer After Certificate of Final Completion.** Following issuance by the District of the Certificate of Final Completion, Developer may affect a Transfer subject to the terms of the Affordable Housing Covenant.

12.3 **Obligations and Liabilities.** The obligations and liabilities under this Covenant shall apply only with respect to the period that such Developer owns the Property. Upon assignment by Developer of its interests in the Property (other than to a lender as security for a loan), Developer shall be relieved of all obligations and liabilities under this Covenant arising after the date of the assignment, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the assignment, the successor, transferee or assignee in ownership or interest of Developer shall automatically become "Developer" hereunder and liable for all obligations arising after the date of the conveyance.

12.4 **Estoppel.** In the event of a transfer prior to the District's issuance of the Certificate of Final Completion, District shall provide to Developer, within twenty (20) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default by Developer exists under this Covenant.

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

such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

*[Signatures on following pages]*

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

**DISTRICT:**

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

By: \_\_\_\_\_  
Name: Brian Kenner  
Title: Deputy Mayor for Planning and Economic Development

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My commission expires:

*Approved for Legal Sufficiency:*

Office of the General Counsel

By: \_\_\_\_\_

Date: \_\_\_\_\_

**DEVELOPER:**

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Developer, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**  
**[See attached]**



**EXHIBIT B**

**Schedule of Performance**

**EXHIBIT C**

**Final Project Budget**

**EXHIBIT D**

**Form of Release of Construction Covenants**

**EXHIBIT F**  
Form of Development and Completion Guaranty

DEVELOPMENT AND COMPLETION GUARANTY

THIS DEVELOPMENT AND COMPLETION GUARANTY (“**Guaranty**”) is made as of \_\_\_\_\_, 20\_\_ , by \_\_\_\_\_ (the “**Guarantor**”), for the benefit of the District of Columbia, a municipal corporation, acting by and through the office of the Deputy Mayor for Planning and Economic Development (the “**District**”).

RECITALS:

WHEREAS, District and 1336 8<sup>th</sup> Street SPE LLC (“**Developer**”) have entered into a certain Land Disposition and Development Agreement, dated as of \_\_\_\_\_, 20\_\_ (the “**Development Agreement**”), pursuant to which, among other things, District has agreed to convey the Property to Developer, and Developer has agreed to develop the Project on the Property.

WHEREAS, the continuing obligations of Developer to develop and construct the Property as contemplated by the Development Agreement are set forth in a certain Construction and Use Covenant of even date herewith between District and Developer (as may be amended from time to time, the “**Construction and Use Covenant**”) being recorded on or about the date hereof among the land records of the District of Columbia as an encumbrance on the Property. Prior to Commencement of Construction of the Project, and as a condition to closing under the Development Agreement, and as a guaranty of the performance of Developer of its obligations under the Construction and Use Covenant, the Guarantor is required to deliver this Guaranty to District.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, Guarantor and District, each intending to be legally bound hereby, hereby agree as follows:

1. **Recitals; Definitions.**

1.1 The foregoing recitals are true and correct and are incorporated into this Guaranty by this reference and made a material part of this Guaranty.

1.2 Capitalized terms used and not defined in this Guaranty shall have the meaning attributed to them in the Construction and Use Covenant.

2. **Representations and Warranties.**

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

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

board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it is bound;

(b) Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the Development Agreement, this Guaranty, the Construction and Use Covenant, the Schedule of Performance, the Approved Construction Drawings, and the documents referenced in each of the foregoing;

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

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

(e) this Guaranty has been duly authorized, executed and delivered by Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the rights of creditors generally, and subject to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law);

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

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

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

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

(j) to the knowledge of Guarantor as of the date hereof, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein and/or in the Construction and Use Covenant, as may be extended or deemed extended pursuant to the terms thereof;

(k) Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments and governmental charges levied upon it or any of its assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

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

(m) Guarantor is not a Prohibited Person; and

(n) all financial statements delivered to District at any time by or on behalf of Guarantor (i) to Guarantor's knowledge, are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principles (if Guarantor is not a natural Person) (or other accounting principles as District may agree to in its discretion, such agreement not to be unreasonably withheld, conditioned or delayed) consistently applied, and there has been no material adverse change in the financial position of such Guarantor since the respective dates of (or periods covered by) such statements, and without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually by Guarantor and not jointly with any spouse or other Person. No property held jointly by any Guarantor with any third party shall be included in the assets shown on such Guarantor's financial statements.

2.2 Guarantor agrees that all of the representations and warranties of Guarantor in this Guaranty are made and shall be true as of the date of this Guaranty and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within five (5) Business Days upon its discovering any breach of such representations or warranties.

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

### 3. Guaranty.

3.1 Guarantor hereby absolutely and unconditionally guarantees to District and its successors and assigns: (i) the Commencement of Construction and prosecution of construction through Final Completion pursuant to the terms and conditions of the Construction and Use

Covenant, and within the time period allotted therefor in the Schedule of Performance attached as an exhibit to the Construction and Use Covenant, as may be extended or deemed extended by the terms of the Construction and Use Covenant, and also in accordance with the Approved Construction Drawings for the Project, as said Approved Construction Drawings and Schedule of Performance may be revised and/or modified from time to time in accordance with the Construction and Use Covenant; (ii) that Developer shall keep the Property and the Project free and clear of all liens (other than liens in favor of a mortgagee approved by District), claims of lien and other claims connected with or arising out of the construction or completion of the Project; provided, however, if such a lien is filed Guarantor shall have thirty (30) days to bond over or otherwise remove such a lien; and (iii) the payment in full of all amounts due to any contractor, subcontractor, materialman, laborer, any employee or other Person who is engaged at any time in work or supplying materials in connection with the construction of the Project if and to the extent not paid by Developer (collectively, the “**Guaranteed Obligations**”).

3.2 In the event of any default by Developer under the Construction and Use Covenant (“**Developer Default**”), District shall provide written notice to Guarantor thereof simultaneously with its notice to Developer of such default, and upon the expiration of any applicable notice and/or cure period, Guarantor agrees, upon request by District, at Guarantor’s option either: (a) to assume responsibility for the performance of the Guaranteed Obligations (to the extent such Developer Default arises from a failure by Developer to perform the Guaranteed Obligations), prior to the date for Final Completion of the Project specified in the Construction and Use Covenant, and to pay all costs and expenses in connection therewith, at Guarantor’s own cost and expense; or (b) to cure any Developer Default (to the extent such Developer Default arises from a failure by Developer to perform the Guaranteed Obligations), to the extent curable. Without limiting the generality of the foregoing, Guarantor agrees that if any mechanic’s or materialmen’s liens should be filed, or should attach, with respect to the Property by reason of the construction of the Project, Guarantor shall cause the removal or waiver of such liens, within thirty (30) days, or otherwise bonding over such liens in a manner sufficient to cause the removal of the lien. So long as Guarantor timely complies with the immediately preceding sentence, each Guarantor shall have the right to contest in good faith any claim, lien or encumbrance, provided that such Guarantor does so diligently and without prejudice to District or delay in the Final Completion of the Project.

#### 4. **Reports.**

4.1 If Guarantor is not a natural person, within ninety (90) days after the end of Guarantor’s fiscal year, Guarantor shall deliver to District a copy of such Guarantor’s balance sheet, income statement and statement of changes in financial position for such fiscal year. Each such annual report shall (a) include a schedule of all material contingent liabilities and all other notes and schedules relating thereto, (b) be in a form reasonably satisfactory to District, (c) be prepared in accordance with generally accepted accounting principles (or other accounting principles as District may agree to in its sole and absolute discretion) consistently applied, (d) be audited by an independent, certified public accountant who is a member of the American Institute of Certified Public Accountants and otherwise acceptable to District, and (e) be accompanied by a certification of Guarantor to District (made by the chief financial officer in the case of any corporate Guarantor) that such report (i) has been prepared in accordance with



generally accepted accounting principles (or other accounting principles as District may agree to in its sole and absolute discretion) consistently applied, (ii) presents fairly the financial condition of such Guarantor as of the respective dates thereof, and (iii) shows all direct and contingent material liabilities of Guarantor as of such dates.

4.2 If the Guarantor is a natural Person, within thirty (30) days after the end of each calendar year, Guarantor shall deliver to District a copy of Guarantor's financial statement as of the end of such calendar year. Each such financial statement shall (a) include a statement of assets and liabilities, including a schedule of all material contingent liabilities and all other notes and schedules relating thereto, (b) be in a form consistent with that delivered to the District prior to the execution of this Guaranty or otherwise reasonably satisfactory to District, and (c) be accompanied by a certification of Guarantor to District that such financial statement presents fairly the financial condition of Guarantor as of the respective dates thereof, and shows all direct and contingent material liabilities of Guarantor as of such dates.

4.3 From time to time promptly after District's request, but no more frequently than quarterly, Guarantor shall deliver to District such additional information, reports and statements regarding the business operations reasonably related to the Project or the financial condition of Guarantor as District may reasonably request.

5. **Guaranty of Completion and Payment; Independent Obligation.** This is a direct, absolute, unconditional, guaranty of completion, and is a guaranty of payment and performance, not of collection. The obligations of Guarantor under this Guaranty are independent and primary, and District shall not be required to take any action against Developer, any mortgagee, or any other Person or resort to any other collateral or security given for the performance of Developer as a precondition to the obligations of each Guarantor under this Guaranty. Guarantor hereby waives any rights it may have to compel District to proceed against the Developer, or any security, or to participate in any security for Guarantor's obligations hereunder, even though any rights which such Guarantor may have against Developer or others may be destroyed, diminished or otherwise affected by such action or lack thereof. Neither the declaration of a Developer Default, nor the exercise of any remedies against Developer, shall in any way affect Guarantor's responsibility for the obligations guaranteed hereunder, even though any rights which Guarantor may have against Developer or others may be destroyed, diminished or otherwise affected by such action. Notwithstanding anything in this Guaranty or the Construction and Use Covenant to the contrary, in consideration for Guarantor agreeing to guaranty the Guaranteed Obligations pursuant to this Guaranty, District agrees to perform its obligations under the Construction and Use Covenant in all material respects and shall not terminate the Construction and Use Covenant while enforcing this Guaranty or while any Guarantor is performing its obligations hereunder.

6. **No Release or Waiver.**

6.1 No action which Developer or District may take or omit to take in connection with the Project, nor any course of dealing with Developer or any other Person, shall release Guarantor's obligations hereunder or affect this Guaranty in any way. By way of example, but not in limitation of the foregoing, Guarantor hereby expressly agrees that District may, from time to time, and without notice to Guarantor, but with the written prior agreement of Developer:

(a) amend, change or modify, in whole or in part, the Construction and Use Covenant;

(b) waive any terms, conditions or covenants of the Construction and Use Covenant, or grant any extension of time or forbearance for performance of the same;

(c) compromise or settle any amount due or owing, or claimed to be due or owing, under the Construction and Use Covenant;

(d) surrender, release or subordinate any or all security for the Construction and Use Covenant, or accept additional or substituted security therefor; and

(e) release, substitute or add guarantors of the Construction and Use Covenant.

Guarantor further agrees that it shall not be released from its obligations hereunder, nor shall Guarantor's obligations under this Guaranty be altered or impaired by any delay of District in enforcing the terms and conditions of the Construction and Use Covenant or any other document to which District is a party or beneficiary or by any waiver of any Developer Default under the Construction and Use Covenant or any such other document, or by any other act, omission, thing, fact or circumstance which might otherwise operate as a legal or equitable discharge of Developer or a legal or equitable limitation on or diminution of the liability of Developer under the Construction and Use Covenant. No extension of the time of payment or performance of any obligation hereunder guaranteed, or the renewal thereof, nor delay in the enforcement thereof or of this Guaranty, or the taking, exchanging, surrender or release of other security therefor, or the release or compromise of any liability of Developer shall affect the liability of or in any manner release any Guarantor, and this Guaranty shall be a continuing one and remain in full force and effect until each and every obligation hereby guaranteed shall have been paid and performed in full or District has affirmatively released Guarantor from the obligation in writing

6.2 Notwithstanding the provisions of Section 6.1, or any other provision of this Guaranty, District agrees that upon achievement of Final Completion of the Project, all claims against each Guarantor under this Guaranty with regard to the Project shall be extinguished.

7. **Relief from Automatic Stay.** If: (i) a default by Developer has occurred under Section 5.1.1(c) of the Construction and Use Covenant beyond applicable notice and cure periods; and (ii) the automatic stay imposed by the applicable provisions of the Bankruptcy Code, as amended, or under any other applicable law, against the exercise of the rights and remedies otherwise available to creditors of the Developer is deemed by the court having jurisdiction to apply to Guarantor who is not in bankruptcy so that Guarantor is not permitted to perform its obligations under this Guaranty and/or District may not immediately enforce the terms of this Guaranty or exercise such other rights and remedies against Guarantor as would otherwise be provided by law, District shall immediately be entitled, and Guarantor hereby consents, to relief from such stay, and Guarantor hereby authorizes and directs District to present this Guaranty to the applicable court to evidence such agreement and consent.

## 8. **Waivers.**

8.1 To the fullest extent each Guarantor may do so under Applicable Law, except as may be expressly provided in this Guaranty to the contrary, Guarantor expressly waives notice of acceptance of this Guaranty or the right to enforce any of the terms of the Construction and Use Covenant, or any liability under this Guaranty. Except as provided in Section 9.1, or any other express provision of the Guaranty to the extent permitted by Applicable Law, District shall not be required to give any notice to Guarantor hereunder in order to preserve or enforce District's rights, any such notice being expressly waived by Guarantor. In addition, if and to the extent permitted by Applicable Law, Guarantor agrees that District shall have no duty to disclose to Guarantor any information it receives or have reasonably available to it regarding the financial status of the Developer, or any contractor, subcontractor or materialmen involved in the construction of the Project, or any information relating to the Project, whether or not such information indicates that the risk that Guarantor may be required to perform hereunder has been or may be increased. Guarantor assumes full responsibility for being and keeping informed of all such matters.

8.2 In addition to the foregoing, Guarantor expressly waives the following:

(a) lack of validity, genuineness or enforceability of any provision of any of the Development Agreement, the Construction and Use Covenant or any other agreement between District, Developer, Guarantor or any other Person;

(b) any defense based on the incapacity, lack of authority, death or disability of any Person or the failure of District to file or enforce a claim against the estate of any Person in any administrative, bankruptcy or other proceeding;

(c) any defense based on an election of remedies by District, whether or not such election may affect in any way the recourse, subrogation or other rights of Guarantor against the Developer or any other Person in connection with the Guaranteed Obligations;

(d) any defense based on the negligence of District in administering or overseeing the Project or any part thereof, or taking or failing to take any action in connection therewith; and

(e) any defense based on any change to the Approved Construction Drawings, the Development Agreement, the Schedule of Performance, the Construction and Use Covenant or any of the documents referenced in any of the foregoing made without the consent or knowledge of Guarantor.

## 9. **Guaranty Event of Default; Remedies.**

9.1 It is expressly agreed that any of the following shall be a "**Guaranty Event of Default**" by Guarantor under this Guaranty (without, except as expressly set forth below, any notice, cure or grace period):

(a) the failure of Guarantor to notify District of its intent to commence and diligently pursue to completion the Guaranteed Obligations within ten (10) Business Days after its receipt of written notice from District that Developer has failed to cure a default under the Construction and Use Covenant prior to the expiration of all applicable notice and/or cure periods and commencement of such activities within thirty (30) days after delivery of such a notice;

(b) the failure of Guarantor to timely deliver to District the reports required under Section 4 herein, and the failure of Guarantor to cure such default within thirty (30) days after its receipt of written notice from District of such default;

(c) the death, dissolution or incompetency of Guarantor [*TBD, based upon identity of Guarantor*], and the failure of a replacement of this Guaranty to be delivered to District within sixty (60) days after such death, dissolution or incompetency with a Guaranty executed by a Guarantor of comparable net worth;

(d) the falsity in any material respect of, or any material representation in, any representation made to District by Guarantor in the event Guarantor fails to promptly cure any such false statement or representation;

(e) the determination by District in good faith that a material adverse change has occurred in the financial condition of Guarantor, including, without limitation, the entry of a significant judgment against Guarantor, or the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor which would have an adverse effect on Guarantor's ability to perform its obligations under this Guaranty;

(f) except as set forth in subsection (a) through (e) or subsection (g) of this Section 9.1, any violation, default or breach by Guarantor of any of the Guaranteed Obligations, and the failure of Guarantor to cure such violation, default or breach within thirty (30) days after its receipt of written notice from District of such failure; provided, however, if such violation, default or breach cannot reasonably be cured within such thirty (30) day period, Guarantor shall have commenced to cure such violation, default or breach within such thirty (30) day period, and thereafter diligently and expeditiously proceeds to cure same, then such thirty (30) day period shall be extended for so long as it shall require Guarantor to effect such cure, but in no event more than an additional one hundred (120) days; and/or

(g) the occurrence of any Insolvency Event (as defined below) with respect to Guarantor. The term "**Insolvency Event**" shall mean any of the following: in the event that by order of a court of competent jurisdiction, a receiver or liquidator or trustee of Guarantor or any of its property shall be appointed and shall not have been discharged within ninety (90) days, or, if by decree of such a court, Guarantor shall be adjudicated bankrupt or insolvent or any of Guarantor's property shall have been sequestered, and such decree shall remain undischarged and unstayed for ninety (90) days after the entry thereof, or if a petition to reorganize Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to Guarantor, as now or hereafter in effect, shall be filed against Guarantor and shall not be dismissed within ninety (90) days after such filing, or if Guarantor shall file a petition in voluntary bankruptcy under any provision of any bankruptcy

law or shall consent to the filing of any bankruptcy or reorganization petition against it under such law, or if (without limitation of the generality of the foregoing) Guarantor shall file a petition for an arrangement or to reorganize Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to Guarantor, as now or hereafter in effect, or shall make an assignment for the benefit of its creditors, or shall admit in writing Guarantor's inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of Guarantor or of all or any part of Guarantor's property.

9.2 Following the occurrence of a Guaranty Event of Default, District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for District to marshal assets in favor of Developer, Guarantor or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty. Additionally, Guarantor agrees that upon any Guaranty Event of Default, District may, without the consent of or notice to Guarantor: (a) complete the performance of the Guaranteed Obligations; (b) exercise its rights under the Construction and Use Covenant, and/or (c) take or refrain from taking such other action to enforce the provisions of this Guaranty as it may from time to time determine in its sole discretion.

10. **Indemnification.** Guarantor agrees to indemnify and hold harmless District for all reasonable, direct, out-of-pocket costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, and costs of collection incurred or paid by District arising out of or in connection with (a) the Guaranteed Obligations, and (b) the enforcement of this Guaranty by District. Notwithstanding the foregoing, Guarantor shall not have any obligation to indemnify District for any costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, if Guarantor should prevail in an enforcement action; provided, further, the immediately preceding proviso clause shall not be deemed to release Guarantor from its indemnification obligations under this Guaranty if District prevails against Guarantor in any enforcement action notwithstanding the fact that District may not have prevailed against Guarantor in a previous enforcement action.

11. **No Limitation of Obligations.** To the fullest extent Guarantor may do so under Applicable Law, Guarantor agrees that it shall make no claim or setoff, defense, recoupment or counterclaim of any sort whatsoever, nor shall Guarantor seek to impair, limit or defeat in any way its obligations hereunder. To the fullest extent Guarantor may do so under Applicable Law, Guarantor hereby waives any right to the claims referenced in the preceding sentence in limitation of its obligations hereunder. District acknowledges and agrees that nothing in this Section 11 shall be deemed to limit Developer's right to bring any claim or counterclaim against the District in the event District declares a Developer Default.

12. **No Right of Subrogation.** Until all of the Guaranteed Obligations are fully paid, performed and/or fulfilled, Guarantor agrees solely with respect to itself that it: (i) shall have no right of subrogation against Developer by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor under this Guaranty; (ii) waives any right to enforce any remedy which Guarantor now or hereafter shall have against Developer by

reason of any payment or act of performance in compliance with the obligations of Guarantor hereunder; and (iii) subordinates any present or future, liquidated or unliquidated, liability, indebtedness or obligations of Developer to Guarantor, irrespective of the respective dates of the incurrence, accrual or maturity thereof, to the indebtedness and obligations of Developer to District under the Construction and Use Covenant.

13. **No Assignment or Delegation; Merger.** Except in connection with an assignment of the Construction and Use Covenant permitted pursuant to the terms thereof or otherwise approved by District, Guarantor shall not assign or delegate its obligations under this Guaranty except as expressly set forth herein, above. If Guarantor is not a natural person and is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as a Guarantor under this Guaranty to the same extent as the original named Guarantor hereunder.

14. **Notice of Bankruptcy or Insolvency.** Guarantor agrees to furnish to District written notice of any Insolvency Event as soon as such Guarantor becomes aware of the existence of such Insolvency Event.

15. **Choice of Law and Consent to Jurisdiction.** This Guaranty shall in all respects be governed by and construed in accordance with the laws of the District of Columbia, without reference to its conflicts of law principles. Guarantor hereby consents to jurisdiction of the federal or local jurisdiction courts within the District of Columbia for purposes of such litigation and waives any right it may have to seek a change of venue of such proceedings. Guarantor further agrees not to assert in any action, suit or proceeding arising out of or relating to the Construction and Use Covenant that Guarantor is not personally subject to the jurisdiction of such courts, that the action, suit or other proceeding is brought in an inconvenient forum, or that the venue of the action, suit or other proceeding is improper. Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by serving a copy of the summons and complaint upon Guarantor at the notice address set forth below in accordance with the applicable laws of the District of Columbia. Nothing herein contained, however, shall prevent District from bringing any action or exercising any right against Guarantor within any other jurisdiction or state. Initiating such proceeding or taking such action in any other jurisdiction or state shall not, however, constitute a waiver of the agreement herein contained that the laws of the District of Columbia shall govern the rights and obligations of the parties hereunder. Guarantor agrees that District may, and Guarantor agrees not to oppose District's attempts to, consolidate any litigation arising out of or relating to this Guaranty with any action(s), suit(s) or proceeding(s) against the Developer or any other individual or entity and/or the property of any of the foregoing arising out of or relating to the Construction and Use Covenant.

16. **Notices.** Any notice, demand, statement or request required under this Guaranty 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, at the following respective addresses:

IF TO DISTRICT:

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

With a copy to:

Office of the General Counsel for the Deputy Mayor for Planning and Economic  
Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attn: General Counsel

IF TO GUARANTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to (which shall not constitute notice):  
***[Roadside and Dantes Partners, if applicable]***

\_\_\_\_\_  
\_\_\_\_\_

Notices served upon District or Guarantor in the manner aforesaid shall be deemed to have been received for all purposes under this Guaranty as follows: (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 Guaranty 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 Guaranty.

17. **Severability.** In the event that any provision of this Guaranty is held to be void or unenforceable, all other provisions shall remain unaffected and be enforceable.

18. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY: (I) COVENANTS AND AGREES NOT TO ELECT TRIAL BY JURY OF ANY ISSUE HEREUNDER TRIABLE OF RIGHT BY A JURY; AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY GUARANTOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND

EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY TO PROVIDE OR ACCEPT THIS GUARANTY, AS APPLICABLE. FOR THE PURPOSES OF THIS SECTION 18, THE TERM "PARTY" IS DEEMED TO MEAN DISTRICT, AS WELL AS GUARANTOR.

19. **Time is of the Essence.** Time is of the essence with respect to all matters set forth in this Guaranty.

[SIGNATURE PAGE FOLLOWS]



COUNCIL SUBMISSION VERSION

SIGNATURE PAGE TO  
DEVELOPMENT AND COMPLETION GUARANTY

IN WITNESS WHEREOF, each Guarantor has executed this Guaranty as of the date first written above.

GUARANTOR:

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**EXHIBIT G**  
First Source Agreement



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
FIRST SOURCE EMPLOYMENT AGREEMENT FOR  
CONSTRUCTION PROJECTS ONLY**



**GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION**

CONTRACT/SOLICITATION NUMBER: "8th & O Streets NW" (1336 8th Street NW) **RECEIVED**  
 DISTRICT CONTRACTING AGENCY: ODMPED  
 CONTRACTING OFFICER: Joseph Lapan  
 TELEPHONE NUMBER: 202-374-6173  
 TOTAL CONTRACT AMOUNT: \$17 million construction costs  
 EMPLOYER CONTRACT AMOUNT: \$17 million construction costs  
 PROJECT NAME: 8th & O  
 PROJECT ADDRESS: 1336 8th Street NW  
 CITY: Washington STATE: DC ZIP CODE: 20001  
 PROJECT START DATE: 2015 PROJECT END DATE: 2017  
 EMPLOYER START DATE: July 2016 EMPLOYER END DATE: December 2017

**RECEIVED**  
 MAY 08 2015  
 BY:

**EMPLOYER INFORMATION**

EMPLOYER NAME: Roadside Development, LLC (an affiliate of which will be member of SPE)  
 EMPLOYER ADDRESS: 1730 Rhode Island Ave NW, Suite 512  
 CITY: Washington STATE: DC ZIP CODE: 20036  
 TELEPHONE NUMBER: 202-375-7979 FEDERAL IDENTIFICATION NO.: 54-1868658  
 CONTACT PERSON: Lionel Lynch  
 TITLE: Project Manager  
 E-MAIL: llynch@roadsidellc.com TELEPHONE NUMBER: 202-375-7944  
 LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION  
 NUMBER: LS29746022016  
 D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: \_\_\_\_\_  
 ARE YOU A SUBCONTRACTOR  YES  NO IF YES, NAME OF PRIME  
 CONTRACTOR: \_\_\_\_\_

This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, (DOES) and EMPLOYER. Pursuant to this Agreement, the EMPLOYER shall use DOES as its first source for recruitment, referral, and placement of new hires or employees for all jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all jobs created by the Project as outlined below in Section VII. The EMPLOYER shall ensure that District of Columbia residents (DC residents) registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% (or 60% where applicable) of all apprenticeship hours worked in connection with the Project.

**I. DEFINITIONS**

The following definitions shall govern the terms used in this Agreement.

A. **Apprentice** means a worker who is employed to learn an apprenticeable occupation under the terms and conditions of approved apprenticeship standards.

B. **Beneficiary** means:

1. The signatory to a contract executed by the Mayor which involves any District of

Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.
  3. A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of \$300,000.
- C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted project or contract totaling \$300,000 or more.
- D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.
- E. **EMPLOYER** means any entity awarded a government assisted project or contract totaling \$300,000 or more.
- F. **First Source Employer Portal** means the website consisting of a connected group of static and dynamic (functional) pages and forms on the World Wide Web accessible by Uniform Resource Locator (URL) and maintained by DOES to provide information and reporting functionality to EMPLOYERS.
- G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.
- H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.
- I. **Government-assisted project or contract (Project)** means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.
- J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:
1. An ex-offender who has been released from prison within the last 10 years;
  2. A participant of the Temporary Assistance for Needy Families program;
  3. A participant of the Supplemental Nutrition Assistance Program;
  4. Living with a permanent disability verified by the Social Security Administration or

District vocational rehabilitation program;

5. Unemployed for 6 months or more in the last 12-month period;
6. Homeless;
7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or
8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

**K. Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

**L. Jobs** means any union and non-union managerial, nonmanagerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

**M. Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

**N. Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:

1. A projection of the total number of hours to be worked on the project or contract by trade;
2. A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by DC residents;
3. A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by DC residents;
4. A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by DC residents;
5. A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by DC residents;
6. A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;
7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;
  9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;
  10. The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;
  11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the project or contract;
  12. A strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ DC residents from one project or contract to the next;
  13. A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and
  14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.
- O. **Tier Subcontractor** means any contractor selected by the primary subcontractor to perform portion(s) or all work related to the trade or occupation area(s) on a contract or project subject to this First Source Agreement.
- P. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.
- Q. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.

## **II. GENERAL TERMS**

- A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date, whichever is later. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.
- B. The EMPLOYER will require all Project contractors and Project subcontractors with contracts or subcontracts totaling \$300,000 or more to enter into an Agreement with DOES.

- C. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.
- D. This Agreement will take effect when signed by the parties below and will be fully effective through the duration, any extension or modification of the Project and until such time as construction is complete and a certificate of occupancy is issued.
- E. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- F. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401- 1431.
- G. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.
- H. The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.
- I. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
  - 1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.
  - 2. Notify DOES within 7 business days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.
- J. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.
- K. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

### III. TRAINING

- A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate

Training Agreement.

**IV. RECRUITMENT**

- A. The EMPLOYER will complete the attached Revised Employment Plan that will include the information outlined in Section I.N., above.
- B. The EMPLOYER will post all job vacancies with the Job Bank Services of DOES at <http://does.dc.gov> within 7 days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.
- C. The EMPLOYER will notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYERS' identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.
- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

**V. REFERRAL**

- A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice set forth above in Section IV.C.
- B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

**VI. PLACEMENT**

- A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.
- B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. The EMPLOYER will still be required to meet the hiring or hours worked percentages for all jobs created by the Project.
- C. After the EMPLOYER has selected its employees, DOES is not responsible for the



employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

## **VII. REPORTING REQUIREMENTS**

- A. EMPLOYER is given the choice to report hiring or hours worked percentages either by Prime Contractor for the entire Project or per each Sub-contractor.
- B. EMPLOYER with Projects valued at a minimum of \$300,000 shall hire DC residents for at least 51% of all new jobs created by the Project.
- C. EMPLOYER with Projects totaling \$5 million or more shall meet the following hours worked percentages for all jobs created by the Project:
1. At least 20% of journey worker hours by trade shall be performed by DC residents;
  2. At least 60% of apprentice hours by trade shall be performed by DC residents;
  3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
  4. At least 70% of common laborer hours shall be performed by DC residents.
- D. EMPLOYER shall have a user name and password for the First Source Employer Portal for electronic submission of all monthly Contract Compliance Forms, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.
- E. EMPLOYER with Projects valued at a minimum of \$300,000 shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
1. Number of new job openings created/available;
  2. Number of new job openings listed with DOES, or any other District Agency;
  3. Number of DC residents hired for new jobs;
  4. Number of employees transferred to the Project;
  5. Number of DC residents transferred to the Project;
  6. Direct or indirect labor cost associated with the project;
  7. Each employee's name, job title, social security number, hire date, residence, and referral source; and
  8. Workforce statistics throughout the entire project tenure.
- F. In addition to the reporting requirements outlined in E, EMPLOYER with Projects totaling \$5 million or more shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
1. Number of journey worker hours worked by DC residents by trade;
  2. Number of hours worked by all journey workers by trade;
  3. Number of apprentice hours worked by DC residents by trade;
  4. Number of hours worked by all apprentices by trade;
  5. Number of skilled laborer worker hours worked by DC residents by trade;
  6. Number of hours worked by all skilled laborers by trade;
  7. Number of common laborer hours worked by DC residents by trade; and
  8. Number of hours worked by all common laborers by trade.

- G. EMPLOYER can "double count" hours for the "hard to employ" up to 15% of total hours worked by DC Residents.
- H. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER must submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.
- I. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.
- J. Monthly, EMPLOYER must submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

### **VIII. FINAL REPORT AND GOOD FAITH EFFORTS**

- A. With the submission of the final request for payment from the Contracting Agency, the EMPLOYER shall:
  - 1. Document in a report to DOES its compliance with the hiring or hours worked percentage requirements for all jobs created by the Project and the percentages of DC residents employed in all Trade Classifications, for each area of the Project; or
  - 2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all jobs created by the Project that will include the following documentation:
    - a. Documentation supporting EMPLOYER'S good faith effort to comply;
    - b. Referrals provided by DOES and other referral sources; and
    - c. Advertisement of job openings listed with DOES and other referral sources.
- B. DOES may waive the hiring or hours worked percentage requirements for all jobs created by the Project, and/or the required percentages of DC residents in all Trade Classifications areas on the Project, if DOES finds that:
  - 1. EMPLOYER demonstrated a good faith effort to comply, as set forth in Section C, below; or
  - 2. EMPLOYER is located outside the Washington Metropolitan Statistical Area and none of the contract work is performed inside the Washington Metropolitan Statistical Area.
  - 3. EMPLOYER entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or
  - 4. DOES certified that there are insufficient numbers of DC residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
- C. DOES shall consider documentation of the following when making a determination of a good-faith effort to comply:

1. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;
2. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;
3. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;
4. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;
5. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;
6. Whether the EMPLOYER interviewed employable candidates;
7. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;
8. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;
9. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;
10. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
11. Any additional documented efforts.

#### **IX. MONITORING**

- A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2 219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.
- B. EMPLOYER'S noncompliance with the provisions of this Agreement may result in the imposition of penalties.
- C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.
- D. DOES shall monitor all Projects as authorized by law. DOES will:
  1. Review all contract controls to determine if Prime Contractors and Subcontractors are subject to DC Law 14-24.
  2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.

### EMPLOYMENT PLAN

NAME OF EMPLOYER: Roadside Development, LLC (an affiliate of which will be member of SPE)

ADDRESS OF EMPLOYER: 1730 Rhode Island Ave NW, Suite 512

TELEPHONE NUMBER: 202-375-7979 FEDERAL IDENTIFICATION NO.: 54-1868658

CONTACT PERSON: Lionel Lynch TITLE: Project Manager

E-MAIL: llynch@roadsidedevelopment.com TYPE OF BUSINESS: Real estate development

DISTRICT CONTRACTING AGENCY: Deputy Mayor for Planning and Economic Development

CONTRACTING OFFICER: Joseph Lapan TELEPHONE NUMBER: 2023746173

TYPE OF PROJECT: Development CONTRACT AMOUNT: \$17 million

EMPLOYER CONTRACT AMOUNT: \$17 million

PROJECT START DATE: 2015 PROJECT END DATE: 2017

EMPLOYER START DATE: 2015 EMPLOYER END DATE: 2017

**NEW JOB CREATION PROJECTIONS:** Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A				
B				
C				
D				
E				
F				
G				
H				
I				
J				
K				

Please see justification on page 3



**JUSTIFICATION SHEET:** Please provide a detailed explanation of why the Employer will not have any new hires on the Project.

At this current time during the predevelopment stage, no construction activities are taking place and there will not be any new hires. Roadside Development and Dantes Partners will form a special purpose entity (SPE) to develop the project. That SPE will then contract with a general contractor to build the project, and we will require the selected general contractor to follow First Source guidelines. We will provide an updated employment plan after the general contractor has been selected.