

**CERTIFIED BUSINESS ENTERPRISE
UTILIZATION AND PARTICIPATION AGREEMENT**

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT (this “Agreement”) is made by and between the **DISTRICT OF COLUMBIA** (the “District”), a municipal corporation acting by and through the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT** (“DSLBD”) and MRP/ELLIS SHERMAN, LLC, a District of Columbia limited liability company, or its designees, successors or assigns (the “Developer”).

RECITALS

A. Pursuant to a to be entered into Land Disposition Agreement between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development, Developer intends to provide for the development of a mixed-use residential and retail project located at 965 Florida Avenue NW, Washington DC (the “Project”).

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

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

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

**ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

Section 1.1 CBE Utilization. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Small Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.) (“Old Act”) and/or the Small and Certified Business Enterprise Development and Assistance Act of 2014, as amended, (D.C. Law 20-108; D.C. Official Code § 2-218.01 et seq.) (the “New Act”) (each a “SBE”), (Old Act and New Act collectively referred to herein as “Act”), in connection with the predevelopment and development phases of the Project, including but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from SBEs in an amount equivalent to no less than thirty-five percent (35%) of the adjusted development budget (“Adjusted Development Budget” or “Adjusted Budget”) detailed in Attachment 1 (the “CBE Minimum Expenditure”). If there are insufficient qualified SBEs to fulfill the 35% requirement, the requirement may be satisfied by subcontracting 35% to qualified Certified Business Enterprises certified pursuant to the Act. SBE and Certified Business Enterprises collectively referred to herein as (“CBE”). The Adjusted Development Budget is **\$49,283,554**. The CBE Minimum Expenditure is therefore **\$17,249,244**.

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District (“Expenditure Period”). If within three (3) years of the execution of this Agreement the Developer has not achieved the CBE Minimum Expenditure and has not obtained a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

Section 1.3 Adjustments to the Total Development Budget or CBE Minimum Expenditure. If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure (“Adjustment”). The CBE Minimum Expenditure and Contingent Contributions (if applicable as defined herein) shall be automatically increased in the case of an increase, or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of this Agreement and be provided to the Developer and ODCA.

ARTICLE II CBE OUTREACH

Section 2.1 Outreach Efforts. Developer shall utilize the resources of DSLBD, including DSLBD’s website (<http://dslbd.dc.gov>). In particular, Developer shall submit all contracting opportunities for this Project to DSLBD for publication. Developer may identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD’s Certification unit to apply for certification. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD’s website.

ARTICLE III QUARTERLY REPORTING

Section 3.1 Quarterly Reports.

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

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

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

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

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

- (1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;
- (2) has a pending application before DSLBD seeking CBE certification;
- (3) has an expired CBE certification;
- (4) has a CBE certification application that DSLBD denied; or
- (5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification must be valid to receive credit towards the CBE Minimum Expenditure . If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer must check the DSLBD website: <http://lsdbe.dslbd.dc.gov/public/certification/search.aspx>

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

(e) Concurrently with the submission of the Quarterly Reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report. However, DSLBD reserves the right to amend this form. If a completed Vendor Verification Form is not submitted for each contract/subcontract performed by a CBE, or portion thereof, the Developer will **not** receive credit towards the CBE Minimum Expenditure for that contract/subcontract

(f) Concurrently with the submission of the Quarterly Reports, Developer shall also submit a copy of each fully executed contract/subcontract which each CBE contractor/subcontractor identified in the Quarterly Report. **If a fully executed contract/subcontract is not submitted,**

the Developer will not receive credit towards the CBE Minimum Expenditure for that contract/subcontract.

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

Section 3.2 Mandatory Meeting with DSLBD and ODCA. Within ten (10) business days of executing this Agreement, the Developer shall meet with DSLBD and ODCA to discuss the reporting requirements during the Expenditure Period. In the event that DSLBD and/or ODCA is unavailable to meet within 10 business days, Developer shall schedule the meeting on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer, DSLBD and ODCA.

Richard Saas
MRP/Ellis Sherman, LLC
c/o MidAtlantic Realty Partners
3050 K Street NW, Suite 125
Washington, DC 20007
202-719-9000
Rsaas@mrprealty.com

Mr. Chip Ellis
Ellis Development Group, LLC
204 9th Street, NE
Washington DC 20002
202-547-5544
cellis@ellisdevelopmentgroup.com

Ronnie Edwards
Deputy Director
Department of Small and Local Business Development
441 4th street NW, Suite 850N
Washington, DC 20001
202- 727- 3900
Ronnie.Edwards2@dc.gov

Sophie Kamal
Financial Auditor
Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
202- 727- 8998
Sophie.Kamal@dc.gov

**ARTICLE IV
PROJECT MANAGERS AND GENERAL CONTRACTORS/CONSTRUCTION
MANAGERS**

Section 4.1 Adherence to CBE Minimum Expenditure. For each component of the Project, Developer shall require in its contractual agreements with the Project Manager (“PM”), or with the general contractor and/or construction manager for the development project (the “General Contractor” or “GC”), as applicable, that the PM or GC comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the PM or GC to assure that the PM or GC will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the PM or GC and subcontractors of the other obligations and requirements applicable to the Developer under this Agreement. Developer shall inform the PM or GC that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the PM or GC respectively. Specifically, Developer will require in its contractual agreement with its PM or GC, or if the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, work with its PM or GC, to achieve the following actions in contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

- (i) When soliciting bids for products or services for this Project, the PM or GC shall allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.
- (ii) The PM or GC will make full use of DSLBD’s website, found at <http://dslbd.dc.gov>, for subcontracting opportunities and for compliance monitoring.
- (iii) The PM or GC will provide a CBE bidder, who is not the low bidder, an opportunity to provide its final best offer before contract award, provided the CBE bid price is among the top 3 bidders.
- (iv) The PM or GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the PM or GC may accept a job specific certificate of insurance.
- (v) The PM or GC will include in all contracts and subcontracts with CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the subcontract/contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.
- (vi) The PM or GC and subcontractors shall strictly adhere to their contractual

obligations to pay all CBE contractors and subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the PM or GC, the PM or GC is to immediately notify the CBE contractor/subcontractor and advise as to the date on which payment can be expected.

- (vii) The PM or GC commits to pay all CBEs, within fifteen (15) days following the PM's or GC's receipt of a payment which includes funds for such contractors/subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the CBE contractors/subcontractors of the Developer's payment to the PM or GC.
- (viii) The PM or GC commits to verify a contractor/ subcontractor's CBE certification status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a CBE contractor/ subcontractor, in accordance with Article III of this Agreement.

ARTICLE V EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION

Section 5.1 CBE Equity Participation and Development Participation Requirements:

- (i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, ("CBEs") shall receive no less than twenty percent (20%) in sponsor Developer equity participation ("Equity Participation") and no less than twenty percent (20%) in development participation ("Development Participation") in the Project, in accordance with Section 2349a of the Old Act¹, D.C. Official Code § 2-218.49a;
- (ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant's equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;
- (iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a

¹ Pursuant to Section 4(b) of the New Act, this Project is subject to the Equity and Development requirements of the Old Act, because the Land Disposition Agreement was pending prior to the effective date of the New Act.

certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;

- (iv) **CBE Equity Participant's Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;
- (v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and
- (vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

Section 5.2 Sweat Equity Contribution. No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain ("sweat equity contribution"). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

- (i) A detailed description of the scope of work that the CBE will perform;
- (ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;
- (iii) The date or time period when the CBE will receive compensation;
- (iv) The return, if any, the CBE will receive on its sweat equity contribution; and
- (v) An explanation of when the CBE will receive its return as compared to other team members or investors.

Section 5.3 CBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan,

managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing, performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

Section 5.4 No Changes in CBE Equity Participation and Development Participation.

- (i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no decrease in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and
- (ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.

- (i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of returns for the CBE Equity Participant(s) without the Director's express written consent;
- (ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;
- (iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate;
- (iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled; and

Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.

(i) If there is a transfer of title to any District-owned land that will become part of the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act;

(ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

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

Section 5.7 CBE Equity Participation and Development Participation Reports. Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be determined, and amended, by DSLBD. The reports shall be submitted in accordance with Section 3.1 of this Agreement and shall include information regarding:

- (i) Changes in ownership interest of the owners/partners;
- (ii) Additions or deletions of an owner/partner;
- (iii) Changes in the legal status of an existing owner/partner;
- (iv) Changes in the percentage of revenue distribution to an owner/partner;
- (v) A description of team member activities; and
- (vi) The amount of development fees paid to each team member, participant, partner, or owner.

Section 5.8 Article V of this Agreement Controls.

- (i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and

the undersigned CBE Equity Participant(s) and Development Participant(s)

- (ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

Section 5.9 Equity Participation Unmet. If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

ARTICLE VI CONTINGENT CONTRIBUTIONS

Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure. At the end of the Expenditure Period as defined herein, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer's actual CBE expenditures. If Developer's actual CBE expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the "Shortfall"). If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.2 herein, Developer shall make the following payments, each a ("Contingent Contribution"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the "Contribution Fund"). The Contribution Fund is therefore **\$4,312,311**.

- (i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of **\$4,312,311**.
- (ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, **\$862,462**.

- (iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things²:
- a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;
 - b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;
 - c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;
 - d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;
 - e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
 - f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request;
 - g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.
- (iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For

² See Attachment 6 for a list of additional suggested outreach activities.

example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, \$215,616.

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

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

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

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

ARTICLE VII MISCELLANEOUS

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

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

To DSLBD: Department of Small and Local Business Development
441 4th Street, N.W., Suite 850 North
Washington, DC 20001
Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

and Office of the Deputy Mayor for Planning and Economic
Development Government of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic
Development
Tel: (202) 727-6365
Fax: (202) 727-6703

With a copy to: Office of the Attorney General
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 407
Washington, DC 20004
Attention: Attorney General
Tel: (202) 724-3400
Fax: (202) 347-8922

To ODCA: Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
Attention: District of Columbia Auditor
Tel: 202-727-3600

To Developer: MRP/Ellis Sherman, LLC
c/o MidAtlantic Realty Partners
3050 K Street NW, Suite 125
Washington, D.C.20007
Attention: J. Richard Saas and Matthew Robinson
Tel: 202-719-9000

With a copy to: Ellis Development Group, LLC
204 9th Street, NE
Washington DC 20002
Attention: Mr. Chip Ellis
Tel: 202-547-5544

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

Section 7.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 7.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 7.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 7.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety (THERE ARE NO ATTACHMENTS 2 AND 3 FOR THIS PROJECT):

Attachment 1: CBE Minimum Expenditure
Attachment 4: Quarterly Report
Attachment 5: Vendor Verification Forms
Attachment 6: Suggested Outreach Activities

Equity Participation and Development Participation Quarterly Report
Attachment

Section 7.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

Section 7.12 Recitals. The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

Signatures to follow

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: Malik K. Edwards
Malik K. Edwards
Deputy General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 25th DAY OF March 2015

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: Ana Harvey
Ana Harvey
Acting Director

DEVELOPER, MRP/ELLIS SHERMAN, LLC

By: _____
Robert J. Murphy
Authorized Member

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

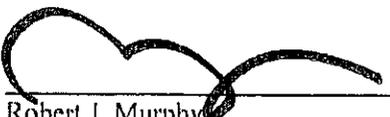
By: _____
Malik K. Edwards
Deputy General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2015

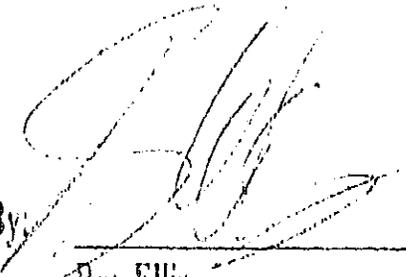
DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Ana Harvey
Acting Director

DEVELOPER, MRP/ELLIS SHERMAN, LLC

By: 
Robert J. Murphy
Authorized Member

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

By:  3/23/15

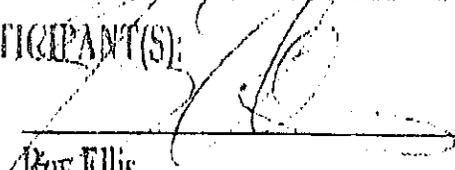
Roy Ellis

EDG Sherman Avenue, LLC, CEO

Minimum of 20% of Development Participation in the Project

LSDR41189042015

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

By:  3/24/15

Roy Ellis

EDG Sherman Avenue, LLC, CEO

Minimum of 20% of Equity Participation in the Project

LSDR41189042015

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



LEGAL ENTITY DEVELOPER

965 Florida Ave. NW
SQUARE 2873
WASHINGTON, D.C.

Attachment 1

3/24/2015

PROJECT OVERVIEW

Project Name:	965 Florida Ave
Project Owner/Sponsor:	Sherman Avenue, LLC
	C/O MRP Realty, 3050 K Street, NW, Washington DC
Developer & Managing Member:	MRP Realty
Local Ownership Partners:	Ellis Development
Lead Architect:	PGN Architects
Civil Engineer:	Bovman
Landscape Architect:	TBD
Traffic Planner:	TBD
Zoning Counsel:	Holland & Knight
Advisory Neighborhood Commission (ANC):	ANC 1B
Project Location	Project is located at 965 Florida Ave. NW

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

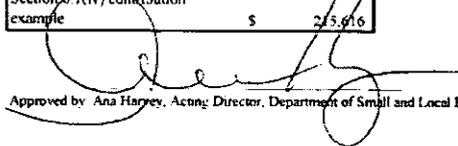
Permanent Loan	\$	63,237,531
District Subsidy	\$	-
Low-Income Housing Tax Credit Equity	\$	-
DCHA Equity	\$	-
Hope VI Subsidy	\$	-
HPAP Subsidy	\$	-
Reinvested Sales Revenue	\$	-
Total Sources of Funds:	\$	<u>63,237,531</u>

USES OF FUNDS - SUMMARY

Total Budget	\$	63,237,531	100.00%
Exclusions	\$	13,953,977	22.07%
Adjusted Budget	\$	49,283,554	77.93%
CBE Minimum Expenditure	\$	17,249,244	35.00% of the adjusted budget.

USES OF FUNDS	
Total Budget	\$ 63,237,531
Allowed Exclusions	Total Costs
Acquisition Cost	\$ 1,400,000
Recordation/Transfer Tax	\$ 20,300
Real Estate Taxes	\$ 97,125
Financing	

DHCD Tax Credit Application Fee	\$	-
DHCD Title Cost	\$	-
DHCD Recordation	\$	-
DCHFA Application Fee	\$	-
DCHFA Construction Monitoring Fee	\$	-
DCHFA Financing Fee	\$	-
DCHFA Tax Credit Allocation Fee	\$	-
DCHFA Internal, External Legal & Consulting	\$	-
DHCD Legal & Other Costs	\$	-
DCHA Administrative Costs	\$	-
CSSP	\$	-
ABC Mortgage Fee (DHCD)	\$	-
ABC Mortgage Fees (Permanent Loan)	\$	-
Inspection Fee (Initial & Monthly)	\$	-
Construction Period Interest & Project Carry	\$	2,036,605
Lender Due Diligence	\$	25,000
Lender Legal	\$	100,000
Lender Construction Servicing Fee	\$	100,000
Loan Fee	\$	1,314,371
Title & Recording - Construction Loan	\$	82,399
Mortgage Recordation Tax (Net of Acquisition)	\$	919,341
Letter of Credit	\$	-
Letter of Credit on Good Faith Deposit	\$	-
Title & Recording - Permanent Loan	\$	-
Prepaid Tax & Insurance Escrows	\$	525,427
Operating Reserve	\$	621,417
Good Faith Deposit	\$	-
Utilities	\$	728,785
Permits	\$	764,957
Soft Cost/Financing Contingency	\$	200,000
Construction Contingency	\$	5,018,250
Development Contingency	\$	-
Total Exclusions	\$	13,953,977
Adjusted Budget	\$	49,283,554
Total Project Budget	\$	63,237,531
Total Exclusions	\$	13,953,977
Adjusted Budget	\$	49,283,554
CBE Minimum Expenditure	\$	17,249,244
Contingent Contribution - 25% of CBE Minimum	\$	4,312,311
Section 6 (i) contribution example	\$	4,312,311
Section 6.1(ii) contribution example	\$	862,462
Section 6.1(iv) contribution example	\$	2,15,916

Approved by  Date 03/25/15
 Approved by Ana Harney, Acting Director, Department of Small and Local Business Development



VENDOR VERIFICATION FORM ("VVF")

Calendar Year: Select

Quarter: Select

PART I. Prime Contractor/ Developer & Agency Contract/ Project Details:

Name: _____ (✓ one) is the Prime Contractor or is the Developer

Project: (✓ one)

- District Agency Contract: District Agency _____ & Contract # _____
 Private Project (Project Name): _____

Subcontract # / Name: _____

(✓ one) SBE/CBE Subcontractor or SBE/CBE Lower Tier Subcontractor

PART II. SBE/ CBE Subcontractor & Lower Tier Subcontractor Details:

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

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

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

Lower Tier Subcontractor	Lower Tier Subcontractor is: SBE, CBE or Non-CBE	Total Amount of Lower Tier Subcontract	Amount Paid to Lower Tier Subcontractor This Quarter	Detailed Description of lower tier subcontractor's scope of work	CBE Certification Number	Fully Executed Lower Tier Subcontract provided with this VVF
1.	Select	\$	\$			Select
2.	Select	\$	\$			Select
3.	Select	\$	\$			Select
4.	Select	\$	\$			Select

PART IV: SBE/ CBE Subcontracting CREDIT:

A Fully executed Subcontract with the SBE/CBE Company AND each SBE & CBE listed in Part III c. is provided with this VVF: (✓ one)

- YES or Previously Provided on _____ Date - Proceed;
 NO - **STOP THIS VVF WILL NOT BE ACCEPTED, AND NO CREDIT GIVEN, UNTIL THE FULLY EXECUTED SUBCONTRACTS ARE PROVIDED!**

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

YES or Previously Provided on _____ Date - Proceed;

NO - **STOP THIS VVF WILL NOT BE ACCEPTED, AND NO CREDIT GIVEN, UNTIL VVFs FOR ALL SBEs & CBEs LISTED IN PART III c. ARE PROVIDED!**

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

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

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

ACKNOWLEDGEMENT

I declare, certify, verify, attest or state under penalty of perjury that the information contained in this Vendor Verification Form, and any supporting documents submitted, are true and correct to the best of my knowledge and belief. I further declare, certify, verify, attest or state under penalty of perjury that I have the authority and specific knowledge of the goods and services provided under each subcontract contained in this Vendor Verification Form. I understand that pursuant to D.C. Official Code § 22-2402, any person convicted of perjury shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both. I understand that any false or fraudulent statement contained in this Vendor Verification Form may be grounds for revocation of my CBE registration pursuant to D.C. Official Code § 2-218.63. I also understand that failure to complete this Vendor Verification Form properly will result in no credit towards the SBE and CBE Subcontracting Requirements. Further, a Prime Contractor, Developer, CBE, or Certified Joint Venture, if subject to, that fails to comply with the requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (D.C. Law 20-108) (the "Act"), shall be subject to penalties as outlined in the Act.

NOTARIZATION

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

Signature: _____ Title: _____

Print Name: _____ Date: _____

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

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

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

Notary signature: _____

(Seal)

commission expires: _____

ATTACHMENT 6

DOCUMENTATION OF ADDITIONAL OUTREACH EFFORTS

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

- (a) A listing of specific work scopes on a trade specific basis identified by the GC in which there are subcontracting opportunities for CBEs;
- (b) Copies of written solicitations used to solicit CBEs for these subcontracting opportunities;
- (c) A description of the GC's attempts to personally contact the solicited CBEs including the names, addresses, dates and telephone numbers of the CBEs contacted, a description of the information provided to the CBEs regarding plans, specifications and anticipated schedules for the work to be performed, and the responses of the CBEs to the solicitation;
- (d) In the event CBE subcontractors are found to be unavailable, the GC must request a written Statement of CBE Unavailability from the DSLBD;
- (e) A description of the GC's efforts to seek waiver of bonding requirements for CBEs, if bonding is required;
- (f) A copy of the GC's request for reduction in or partial release of retainage for CBE;
- (g) A copy of the contract between the prime contractor and each CBE subcontractor if a contract is executed between the District and the prime Contractor.

