

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (the "**Covenant**") is made as of this ___ day of _____, 20__ ("**Effective Date**"), by _____, a "**Developer**") having an address of _____, 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

R-1. District is the fee simple owner of certain real property located in the District of Columbia as further described in **Exhibit A** (the "**Property**").

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-3. District and Developer entered into that certain Land Disposition Agreement dated _____, 20__, and recorded on _____, 20__ as instrument # _____, as the same may be amended ("**Development Agreement**") whereby District and Developer agreed upon the terms under which District agreed to convey the fee simple interest in the Property to Developer and for Developer to develop and construct the Project (defined below) and to sell and/or manage and lease the Affordable Units to be constructed in the Project.

R-4. In accordance with the Development Agreement and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

R-5. District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will construct, maintain, sell and/or lease the Affordable Units in the Project.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer hereby declare, covenant and agree as follows:

**ARTICLE I
DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that no less thirty percent (30%) of the Residential Units shall be affordable. If the Residential Units are for sale units, the Affordable

Units shall be allocated as follows: (a) fifty percent (50%) of Affordable Units shall be reserved for Households with an Annual Household Income more than thirty percent (30%) AMI and less than or equal to fifty percent (50%) AMI and (b) fifty percent (50%) of the Affordable Units shall be reserved for Households with an Annual Household Income more than fifty percent (50%) AMI and less than or equal to eighty percent (80%) AMI. If the Residential Units are rental units, the Affordable Units shall be allocated as follows: (a) twenty five percent (25%) of the Affordable Units shall be reserved for Households with an Annual Household Income less than or equal to thirty percent (30%) AMI and (b) seventy-five percent (75%) of the Affordable Units shall be reserved for Households with an Annual Household Income more than thirty percent (30%) AMI and less than or equal to fifty percent (50%) AMI.

Affordable Unit Marketing Plan: means Developer's plan for marketing the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Affordable Unit: means each Residential Unit that will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index.

Affordable Unit Index: is an index of the Affordable Units contained in the Project, that identifies: (i) unit number (or similar identifier), floor, and location for each Affordable Unit and whether each Affordable Unit is a Rental Affordable Unit or For Sale Affordable Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage and number of bedrooms of each Affordable Unit and a schematic drawing showing the layout of the unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Residential Units; (v) a listing or schedule of the amenities, services, upgrades, parking, and other facilities that will be offered as an option at an additional upfront or recurring cost or fee to the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Agency: means, as of the Effective Date, the D.C. Department of Housing and Community Development, pursuant to Mayor's Order 2009-112 (effective June 18, 2009), or such other agency of the District of Columbia government that may subsequently be delegated the authority of the Mayor to monitor, enforce or otherwise administer the affordable housing requirements of the District of Columbia government.

AMI: means the most current "area median income" (also known as "median family income" or "MFI") for a household of four persons in the "Washington Metropolitan Statistical Area" as periodically published by HUD, and adjusted for Household size without regard to any adjustments made by HUD for the purposes of the programs it administers.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

Annual Report: has the meaning given in Section 4.10.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

Certificate of Purchaser Eligibility: means a certification executed by a Household prior to its purchase of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income to the Certifying Authority and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certificate of Tenant Eligibility: means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Developer, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

Certification of Income: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant or Qualified Purchaser, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Developer that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Developer's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

Certification of Residency: means a certification made by an Affordable Tenant or Affordable Unit Owner that states that the Affordable Tenant or Affordable Unit Owner occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

Certifying Authority: means an entity or entities approved by the Agency pursuant to Section 2.4.

Designated Affordability Level: means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

Developer: is identified in the preamble of this Covenant.

For Sale Affordable Unit: means an Affordable Unit that shall be sold to a Qualified Purchaser.

Foreclosure Notice: is defined in Section 8.4.

Household(s): means all persons who will occupy the Affordable Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements as allowable by this Covenant.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of an Affordable Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units, less any rental subsidies paid on behalf of that Household, and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, condominium or homeowner fees and Utilities for For Sale Affordable Units.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the District of Columbia located in the Recorder of Deeds.

Market-Rate Unit: is each Residential Unit that is not an Affordable Unit.

Maximum Allowable Rent: as defined in Section 4.4.2.

Maximum Annual Household Income or **MAXI**: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to (a) Section 4.5.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to the procedures contained in Schedule 3 attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or **MINI**: is the minimum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to (a) Section 4.5.2 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

Mortgagee: means the holder of a Mortgage.

OAG: means the Office of the Attorney General for the District of Columbia.

Occupancy Standard: means the minimum number of individuals in a Household permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit
Studio/Efficiency	1
1	1
2	2
3	3
4	4
5	5
6	6

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-Income Tenant: as defined in Section 4.6.5.

Owner: means, in the context of Rental Affordable Units, Developer, and in the context of For Sale Affordable Units, Developer for so long as Developer owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

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

Project: means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property pursuant to the Development Agreement.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit, (ii) shall occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, (iv) shall use, occupy, hold and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Unit to a Qualified Purchaser) and this Covenant, and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Qualified Tenant: means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence during its lease of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Rental Affordable Unit: means an Affordable Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

Rental Formula: is defined in **Section 4.4.2.**

Residential Unit: means an individual residential unit constructed as part of the Project.

Sale: is defined in **Section 5.1.**

Transferee: is defined in **Section 5.8.**

Utilities: means water, sewer, electricity, and natural gas.

ARTICLE II AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** Developer shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement. In the event the Project is subject to the Inclusionary Zoning Program codified in 11 D.C.M.R. Chapter 26, the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Official Code §§ 6-1041.01, et seq.), and 14 D.C.M.R. Chapter 22, as the same may be amended, from time to time, the Inclusionary Units (as such term is defined in 11 D.C.M.R. §2601.1) in the Project may be used to satisfy the Affordability Requirement hereunder, to the extent permitted under and consistent with applicable law.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *Affordable Unit Index.* As of the date of this Covenant, District has approved the Affordable Unit Index, which is attached hereto as Exhibit C. Developer shall not amend or modify the Affordable Unit Index, except to the extent permitted under Section 4.6.6, without the Agency's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Any such approved amendment or modification shall be recorded in the Land Records as an amendment to this Covenant.

2.2.2 *Unit Mix.* The distribution of Affordable Units shall be proportional to that of the Market-Rate Units (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 *Size.* The Affordable Units shall be of a size substantially similar to the Market-Rate Units, provided that Affordable Units may be the smallest size of each market rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be substantially similar to the appearance, finish and durability of the exterior finishes of the Market-Rate Units.

2.2.5 *Interior Finishes.* Developer agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be functionally equivalent to the Market-Rate Units.

2.2.6 *Affordable Unit Location.* Affordable Units shall be disbursed throughout the Project and shall not be concentrated on any one floor or within a tier or section of the Project.

2.3 **Marketing Affordable Units.**

2.3.1 *Marketing Plan.* Developer shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Developer may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.3.2 *Housing Locator.* When an Affordable Unit becomes available for rent or for sale, Owner shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008, and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

2.4 **Certifying Authority.** Each Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

ARTICLE III USE

3.1 **Use.** Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Units.

3.2 **Alteration.** Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of the Affordable Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance and repair without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency.

ARTICLE IV RENTAL OF AFFORDABLE UNITS

4.1 **Lease of Rental Affordable Units.** In the event the Project contains Rental Affordable Units, Developer shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 Rental Affordable Unit Lease Requirements.

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

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

4.2.3 *Developer to Maintain Copies.* Developer shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 Rental Affordable Unit Admissions Process.

4.3.1 *Referrals.* Developer may obtain referrals of prospective tenants of Rental Affordable Units from federal and District of Columbia agencies, provided such referrals comply with the requirements of this Covenant. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Developer shall select Qualified Tenants through a lottery system or other system as otherwise approved by the Agency as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Developer shall consider each applicant in the order in which received by Developer, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Developer may reject any applicant if, after diligent review of such applicant's application, Developer determines in good faith that such applicant does not meet Developer's criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable District of Columbia and federal laws and is the same criteria used by Developer to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Developer shall provide the Agency with all documents evidencing Developer's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit.

4.4 Initial Rental Affordable Unit Lease Terms.

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

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each Rental Affordable Unit shall be determined through the use of one of the two following formulas: (a) $MAR = (AMI * DAL * OSF * 30\%) / 12 - MU$ (if the Household pays any Utility costs directly to the Utility providers) or (b) $MAR = (AMI * DAL * OSF * 30\%) / 12$ (if all Utility costs are included in the rent payment to Owner) ("**Rental Formula**"), where:

(1) AMI = see definitions

(2) DAL = Designated Affordability Level (%)

(3) OSF = Occupancy Standard Factor

(4) 30% = Thirty percent (30%)

(5) 12 = Number of months in the lease period

(6) MU = Monthly Utilities paid by the Affordable Unit Tenant. The utility schedule published by the District of Columbia Housing Authority shall be utilized to estimate the MU.

4.5 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is between the MAXI and MINI.

4.5.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1.

4.5.2 *Minimum Annual Household Income.* The Minimum Annual Household Income is determined by multiplying the monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%). Examples of the calculation of the Minimum Annual Household Income are included in the attached Schedule 1.

4.6 Subsequent Lease Years

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

4.6.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Developer shall obtain the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a Certification of Income completed by the Certifying Authority. Developer shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Developer with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Developer shall treat such tenant as an Over-Income Tenant and charge market-rate rent, upon which Developer shall designate another unit as a Rental Affordable Unit in accordance with Section 4.6.6.

4.6.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Certifying Authority shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by the Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market-Rate Unit, whereupon Developer shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6, or the Over-Income Tenant may elect to vacate Unit .

4.6.6 *Changes to Unit Location.* Developer may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Developer shall designate the next available Rental Affordable

Unit at that same higher Designated Affordability Level or Market-Rate Unit of similar size, type and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.6.7 Rent from Subsidies. Nothing herein shall be construed to prevent Developer from collecting rental subsidy or rental-related payments from any federal or District of Columbia agency paid to Developer and/or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.7 No Subleasing of Rental Affordable Units. An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Developer shall not knowingly allow such Rental Affordable Unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion.

4.8 Representations of Affordable Unit Tenant. By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Agency and Developer, each of whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.9 Representations of Developer. By execution of a lease for a Rental Affordable Unit, Developer shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Developer is not collecting more than the Maximum Allowable Rent.

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

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

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

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

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

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

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

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

4.11 Confidentiality. Except as may be required by applicable law, including, without limitation to, the *District of Columbia Freedom of Information Act of 1976*, D.C. Code § 2-531 *et seq.* (2001), Developer, Certifying Authority and the Agency shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.12 Inspection Rights. The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance written notice to Developer. If Developer receives such notice, Developer shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V SALE OF AFFORDABLE UNITS

5.1 Sale of For Sale Affordable Units. In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified

Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser.

5.1.1 *Maximum Sales Price.* The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "**Maximum Sales Price**") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Housing Cost includes Utilities, mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein. The Developer shall submit to the Agency the proposed sales price for each For Sale Affordable Unit for approval prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2 *Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 3 attached hereto and incorporated herein. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales.** The following procedures shall apply to (i) Developer with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). Examples of the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, Utilities, homeownership or condominium fees, and hazard insurance. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

5.2.2 *Sale.* A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit and (b) a Certification of Income is completed by a Certifying Authority within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3 *Resale.* Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the Agency to determine their eligibility to purchase the For Sale Affordable Unit.

5.3 Closing Procedures and Form of Deed.

5.3.1 *Owner to Provide Copy of Covenant.* Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20__ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20__, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit.* A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations.* The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the Certification of Income.

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable District of Columbia and federal

laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400, *et seq.* Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

5.5 Representations of Owner. By execution of a deed for a For Sale Affordable Unit, Developer (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 Annual Certification of Residency. During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.7 Leasing For Sale Affordable Units. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules).

5.8 Transfers. Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "**Transferee**"), such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 Prohibition on Occupancy. In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 Progress Reports. Until all initial Sales of For Sale Affordable Units are completed, Developer shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale or rental of Affordable Units.

ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Owner, Affordable Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the Agency, the District shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 **No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.3 **Right to Attorney's Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the District prevails, shall pay District all of its costs and expenses, including reasonable attorney fees, incurred in connection with District efforts to enforce this Covenant. If OAG is counsel for the District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of OAG prepared for or participated in any such action.

ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of District, Developer, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of District pertaining to the monitoring and/or enforcement of the obligations of Developer or Affordable Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

ARTICLE VIII MORTGAGES

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide the Agency written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Right of Purchase by the District.* The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Affordable Unit.

8.3.3 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

8.3.5 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.8.

8.4 Assignment of Mortgage to the Secretary of HUD. In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (a) the District's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit by the For Sale Affordable Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

**ARTICLE IX
AMENDMENT OF COVENANT**

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing executed by a duly authorized official of the Agency on behalf of the District, and by a duly authorized representative of Owner of such Affordable Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE X
AFFORDABILITY PERIOD**

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the Affordability Period. For the purposes of this Covenant, the "**Affordability Period**" shall mean the life of the building constructed as part of the Project. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion. Upon determination of the expiration of the Affordability Period, this Covenant shall terminate and be of no further force and effect. At the request of either Party (provided that there is no dispute as to the expiration) and upon termination of the Covenant as set forth above the Parties shall execute a release in a form in compliance with recording requirements of the Land Records. Such requesting party shall bear the cost of drafting and recording the release.

**ARTICLE XI
NOTICES**

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

DISTRICT:

Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE
Washington, DC 20020
Re: Housing Regulation Administration, Affordable Dwelling Unit Monitoring

All notices to be sent to Developer shall be sent to the address given in the preamble. All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the

applicable Person and any successor to the applicable Person to provide the District with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

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

ARTICLE XII MISCELLANEOUS

12.1 Applicable Law: Forum for Disputes. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia (including the Superior Court of the District of Columbia) for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the District irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts of the District of Columbia (including the Superior Court of the District of Columbia), and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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

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

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

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

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

12.7 Limitation on Liability. Owner shall be responsible for the performance of all obligations contained in this Covenant. Owner shall contract with a Certifying Authority to

perform certain obligations contained herein but shall remain liable for the performance of such obligations. In the event the Certifying Authority violates any provisions of this Covenant, Owner shall provide written notice of such violation to District and shall correct such violation or cause the Certifying Authority to correct the violation, both within a reasonable cure period approved by District. If any such violation is not cured within the approved reasonable cure period, District shall have the right to pursue its remedies under Article VI. Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

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

12.9 No Third Party Beneficiary. Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than District shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 Representations of Developer. As of the date hereof, Developer hereby represents and warrants to District as follows:

(a) This Covenant has been duly executed and delivered by Developer, and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Developer of any agreement or order which is binding on Developer; and

(c) Developer (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.11 Federal Affordability Restrictions. In the event the Property is encumbered by other affordability restrictions ("Federal Affordability Restrictions") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("Conflict") with the Federal Affordability Restrictions during the compliance

period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

[Signatures on Following Pages]

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____, witnessed by _____, its _____

WITNESS

DEVELOPER

By: _____
Name: _____
Title: _____

By: _____ [SEAL]
Name: _____
Title: _____

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT _____ who is personally known to be (or proved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Affordable Housing Covenant, bearing the date of the _____ personally appeared before me in said District of Columbia, and as _____, acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this ____ day of _____.

Notary Public

My Commission Expires: _____

APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20__:

WITNESS

DISTRICT OF COLUMBIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved for Legal Sufficiency
D.C. Office of the Attorney General

By: _____

EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT B

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated _____ ("Lease") between _____ ("Resident" or "You") and _____, as Management Agent ("Manager") for _____ ("Owner") for Apartment _____ ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the District of Columbia dated _____, 20__, as may be subsequently amended, (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Unit, which requires the Resident's household income to be less than or equal to [] of the area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION / INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease, the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident's household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Authority's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income

completed by the Certifying Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [] AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a District policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the D.C. Department of Housing and Community Development, in its sole and absolute discretion.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

Resident Signature

Date

Resident Signature

Date

Resident Signature

Date

EXHIBIT C
Affordable Unit Index

SCHEDULE 1

Examples of Calculating Maximum Annual Household Income and Minimum Annual Household Income [Assuming 2014 AMI of \$107,000 for a family of four]

Maximum Annual Household Income for Rental Affordable Units and For Sale Affordable Units:

Q1: Does a two (2) person Household with a \$55,000 annual income qualify under the Maximum Annual Household Income for an 80% AMI Affordable Unit?

A1: **Yes.** The Household makes less than the Maximum Annual Household Income for the 80% AMI Affordable Unit (\$68,480).

$$\$107,000 \text{ (the 2014 AMI)} * 0.8 * 80\% = \$68,480$$

Minimum Annual Household Income for Rental Affordable Units:

Q2: If the monthly Housing Cost for an 80% AMI Rental Affordable Unit is \$1,643, would a 2 person Household with a \$55,000 annual income have enough income to afford the cost of the Rental Affordable Unit?

A2: **Yes.** The Household's Annual Household Income is \$55,000, which is more than \$51,884.

$$\$1,643 * 12 / 38\% = \$51,884$$

Q3: Using the example above, if the monthly Housing Cost for a Rental Affordable Unit is \$1,849, would the 2 person Household have enough income to afford the cost of the Rental Affordable Unit?

A3: **No.** The household's income is \$55,000, which is less than \$58,390.

$$\$1,849 * 12 / 38\% = \$58,390$$

Minimum Annual Household Income for For Sale Affordable Units:

Q4: If the monthly Housing Cost for an 80% AMI For Sale Affordable Unit is \$1,500, would a 2 person Household with a \$55,000 annual income have enough income to afford the cost of the For Sale Affordable Unit?

A4: **Yes.** The Household's income is \$55,000, which is more than \$43,902.

$$\$1,500 * 12 / 41\% = \$43,902$$

Q5: Using the example above, if the monthly Housing Cost for a For Sale Affordable Unit is \$2,200, would the 2 person household have enough income to afford the cost of the For Sale Affordable Unit?

A5: **No.** The Household's income is \$55,000, which is less than \$58,537.

$$\$2,200 * 12 / 41\% = \$58,537$$

SCHEDULE 2

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. *Condominium Fees, if applicable:* Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

Multi-Family Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

- ii. *Homeowner Fees, if applicable:* Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

Single-Family Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

- iii. *Monthly Hazard Insurance, if single family home:* Estimated to be \$125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.
- iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction (\$70,200 in 2014) at current real estate tax rates (\$0.85 per \$100 in 2014).
- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Sale Price would be 5.40%.
- vi. *Down payment:* Assume a down payment of 5% on the purchase of the Affordable Unit.
- vii. *Utilities:* [OPEN: The utility schedule published by the District of Columbia Housing Authority shall be utilized to estimate the MU.]

SCHEDULE 3

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ ("Formula"), where:

- (a) P = the price Owner paid for the Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:
 - (1) As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) -1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) ^ (1/10) -1) / n]) ^ n$, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or
 - (2) As published by the Agency.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair

market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level .

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters,

curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

FORM OF DEVELOPMENT AND COMPLETION GUARANTY

This DEVELOPMENT AND COMPLETION GUARANTY (this “**Guaranty**”) is made as of _____, 2015 (“**Effective Date**”), by MidAtlantic Realty Partners, LLC a Virginia limited liability company (“**Guarantor**”) –in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

RECITALS

A. Sherman Avenue, LLC, a District of Columbia limited liability company (“**Developer**”) and District have entered into a Land Disposition Agreement dated as of _____, 2014 (the “**LDA**”), concerning the sale by District to Developer of real property located 965 Florida Avenue, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 1102, in Square 2873 (the “**Property**”).

B. Pursuant to the terms of the LDA, Guarantor is required to guaranty development and construction of the Project (as defined in the LDA) in the manner and within the timeframes pursuant to the terms of the LDA and the Construction and Use Covenant. The LDA further provides that on or before the Closing Date, and as a condition precedent to the Closing, Developer shall deliver this Guaranty, fully executed by the Guarantor, to District.

C. To induce District to enter into the LDA, Guarantor has agreed to guaranty development, construction and completion of the Project in accordance with the Construction and Use Covenant and the LDA.

NOW, THEREFORE, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Incorporation of Recitals; Definitions. The foregoing Recitals are incorporated in this Guaranty and made a part hereof by this reference to the same extent as if set forth herein in full. Defined terms used herein and not otherwise defined shall have the meanings given them in the LDA.

2. Representations and Warranties.

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

(a) the making and performance of this Guaranty by Guarantor will not result in any breach of any material term, condition or provision of, or constitute a default under, any material 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 LDA, this Guaranty, the Construction and Use Covenant, the Schedule of

Performance, the Approved Plans and Specifications, and the documents referenced in each of the foregoing;

(c) Guarantor is duly organized, validly existing and in good standing under the laws of the State of its 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 except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights from time to time in effect;

(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 comparison to any state of affairs existing before or after the date of this Guaranty) to (i) the business operations, assets or condition (financial or otherwise) of Guarantor, or (ii) the ability of Guarantor to perform, or of District to enforce, any material provision of this Guaranty (a "Material Adverse Change");

(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 now or hereafter 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 Guarantor's knowledge, 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;

(j) to Guarantor's knowledge, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein;

(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 has been no Material Adverse Change to Guarantor;
- (m) there are no conditions precedent to the effectiveness of this Guaranty;
- (n) Guarantor is not a Prohibited Person; and

(o) all financial statements delivered to District at any time by or on behalf of Guarantor (i) 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 consistently applied, and there has been no Material Adverse Change in the financial position of Guarantor since the respective dates of (or periods covered by) such statements. 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 (and solely managed) by Guarantor and not jointly with any spouse or other Person.

2.2 All of the representations and warranties in this Guaranty are true as of the Closing Date and will continue to be true throughout the term of this Guaranty as if remade at all times afterwards and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within ten (10) Business Days upon its discovering any breach of such representations or warranties.

2.3 Guarantors acknowledge 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. Guaranteed Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants contained in Article II (excluding Section 2.2.2), Section 3.3, and Article VIII of the Construction and Use Covenant. Further, except to the extent of District's gross negligence or willful misconduct, Guarantors absolutely, irrevocably, and unconditionally, and jointly and severally, agree to the fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all actual loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations contained in Article II, Section 3.3, and Article VIII of the Construction and Use Covenant, provided that Guarantor shall have the right to cure (which shall include any applicable notice and cure periods) any such default of performance before being liable as stated above and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees). Upon the occurrence of any failure of Developer to fully and timely perform its agreements, covenants, and obligations contained in Article II (excluding Section 2.2.2), Section 3.3 and Article VIII of the Construction and Use Covenant, beyond any applicable notice and cure period, upon request by District,

Guarantor shall, at Guarantor's sole cost and expense, cure such default by or failure of Developer provided that an additional notice and cure period shall be provided to the Guarantor before such actions are deemed a breach of this Guaranty; provided further, however, that in no event shall Guarantor be responsible for any indirect or consequential damages, other than indirect or consequential damages incurred by third parties for which the District is held liable and provided that such damages are not excluded from an indemnification of the Developer. The obligations of Guarantor set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

4. Liens. If any mechanic's or materialmen's liens should be filed, or should attach, with respect to the Property or the Improvements by reason of the construction of the Project, within thirty (30) days after Guarantor is advised in writing of the filing of such liens and the failure of Developer or its Lender to cause the removal or waiver, Guarantor shall take action to cause the removal or waiver of such liens, including, if necessary, the posting of security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District or any delay in Final Completion.

5. No Right of Subrogation. Guarantor hereby acknowledges that, until the obligations to develop, construct and complete the Project under the LDA and Article II of the Construction and Use Covenant are satisfied in full they will not be entitled to reimbursement or distribution from Developer or another guarantor on account of any sums paid by them pursuant to this Guaranty. Guarantor hereby acknowledges and agrees that Guarantor shall not have any right of subrogation by reason of payments or performance in compliance with the terms of this Guaranty, any such right being hereby expressly waived and relinquished. For so long as the Guaranteed Obligations remain unperformed, each Guarantor waives and releases any claim (within the meaning of 11 U.S.C. § 101) which that Guarantor may have against Developer or another guarantor arising from a payment made by a Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Developer or another Guarantor for reimbursement. It is expressly understood that the waivers and agreements of Guarantors set forth above constitute additional and cumulative benefits given to District for its security and as an inducement for it to enter into the LDA with Developer.

6. Financial Statements. Within thirty (30) days after the Effective Date of this Guaranty, and within thirty (30) days after Guarantor's receipt of a request from District from time-to-time (but not more than semi-annually per calendar year) until Final Completion of the Project, each Guarantor shall deliver to District copies of updated, unaudited financial statements (certified by that Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statement, other financial reports, and other financial information of Guarantor as District may reasonably request.

7. No Discharge of Obligations.

7.1 Except in the event of a written amendment to this Guaranty signed by the Guarantors and District and then only to the extent expressly provided therein, to the fullest extent permitted by law, none of Guarantor's obligations and no right against Guarantors shall be in any way discharged, impaired or otherwise affected by:

(a) The modification, amendment, or waiver, by change order, directive, or otherwise, or any extension of time for performance of, or other modification in or of the LDA or Construction and Use Covenant.

(b) The release or waiver of or delay in the enforcement of any right or remedy by District against Developer or any Guarantor under the LDA, Construction and Use Covenant, or this Guaranty, or the compromise or settlement by any of the above parties of any amount or matter in dispute relating to any of the forgoing agreements.

(c) The exercise by District, any mortgage lender, or any other party of any of their respective rights and remedies under the LDA, Construction and Use Covenant, or any mortgage loan documents, or any other agreement relating to the construction of the Improvements.

(d) The approval, disapproval, inspection, review, or failure to inspect or review by District of the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto, in connection with the construction of the Improvements.

(e) The release or discharge of Developer, Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding.

(f) Any act or omission, whether negligent or otherwise, of District or its agents, employees, consultants, or any other Person acting for the benefit of District but expressly excluding gross negligence or willful misconduct of the above parties.

7.2 It is expressly agreed by Guarantor that, to the fullest extent permitted by law, none of the forgoing events shall release or discharge the obligations of Guarantor hereunder, whether or not such event may otherwise be deemed a legal or equitable discharge of a guarantor or surety. Guarantor agrees that neither District nor any other party shall have any duty to disclose to Guarantor any information they receive regarding the financial status of any party involved in the development or construction of the Improvements, or any information relating to the Property, whether such information indicates that the risk or obligations of Guarantor have or may increase. Guarantor assumes full responsibility for keeping informed of such matters.

7.3 No change in the composition of District, Developer or any other Person shall in any way affect, impair, or diminish the liability of Guarantor hereunder, and District shall have no obligation to inquire into the powers of any of them to perform the Guaranteed Obligations.

7.4 This Guaranty is being delivered free of any conditions and no representations have been made to Guarantors affecting or limiting the liability of Guarantors hereunder. The obligations of Guarantors hereunder are independent of any obligations which either Guarantor may have to District, directly or indirectly.

8. Nature of Guaranty. This Guaranty is absolute, irrevocable, and continuing in nature and relates to Guaranteed Obligations now existing or hereafter arising. This Guaranty is a guaranty of prompt and punctual performance and is not a guaranty of collection. The liability of Guarantor hereunder is independent of the obligations of Developer or any other Person, and a separate action or separate actions may be brought or prosecuted against the Guarantor whether or not any action is brought or prosecuted against Developer, another guarantor, or any other Person, or whether Developer, the another guarantor, or any other Person is joined in any such action or actions. The liability of Guarantor hereunder is independent of, and not in consideration of or contingent upon the liability of any other Person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor unless Guarantor is independently and specifically released in writing by District. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance (and not of collection) without regard to:

(a) the legality, validity, or enforceability of any of the LDA, Construction and Use Covenant, or any of the obligations of Developer evidenced thereby;

(b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by Guarantor under this Guaranty); or

(c) any other circumstances whatsoever (with or without notice to or knowledge of Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

9. Relationship to Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument, or agreement executed by each Guarantor in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto. In no event will Guarantors' liability hereunder be reduced as a result of any evidence that the cost to perform the Guaranteed Obligations exceeds the enhancement in value to the Property resulting from performance of the Guaranteed Obligations.

10. Subordination of Indebtedness and Obligations. Guarantors agree that any rights of Guarantors, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) or other obligations or liabilities owed to Guarantor by any other guarantor or Developer shall at all times be subordinate in all respects to the full and prior indefeasible performance of all obligations owed to District under the LDA and Article II of the Construction and Use Covenant. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated at any time that there exists a default beyond applicable grace and cure periods by the Developer under the LDA or Construction and Use Covenant, until all such obligations owed to District have been paid and performed in full.

11. Statute of Limitations and Other Laws. To the fullest extent permitted by law, until the Guaranteed Obligations have been irrevocably paid and performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations. Guarantor expressly waives, to the fullest extent permitted by law, the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301 (2012 Supp.).

12. Rights Upon Default.

12.1 Upon the occurrence of (a) any failure in the performance of the Guaranteed Obligations beyond any applicable notice and cure period, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts as they mature, (d) an assignment by Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed within ninety (90) days of Guarantor's receipt of notice of filing, (f) the determination by the 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, the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor, (g) the falsity in any material respect of or any material omission in any representation made to District by Guarantor, or (h) any other default by Guarantor of any other obligations owed to District under the terms hereof, 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.

12.2 Guarantor agrees that, if District determines that a default has occurred hereunder beyond any applicable notice and cure periods, District may (in addition to all of its other rights and remedies) without the consent of or notice to Guarantor (a) complete or engage one or more third parties to complete construction of the Project pursuant to the terms of the LDA and the Construction and Uses Covenant, (b) terminate any and all contracts and agreements entered into by Guarantor in connection with construction of the Project, (c) engage builders, contractors, engineers, architects, and others for the purpose of furnishing labor, materials, and equipment in connection with the construction of the Project pursuant to the terms of the LDA and the Construction and Uses Covenant, (d) pay, compromise, or settle all bills or claims incurred in connection with Final Completion, (e) take such actions including procuring another developer or developers of the Project, or (f) 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. Guarantor shall, immediately upon demand therefor, reimburse District for any and all

reasonable expenditures incurred by District under this Section plus interest thereon at a rate of fifteen percent (15%) per annum from the date that is thirty (30) days after demand for payment accompanied by reasonable backup documentation until all sums are paid to District. Upon the occurrence of any of (a) through (e) in the first sentence of subsection 12.1, District may file a separate action or actions against one or more Guarantors, whether action is brought or prosecuted with respect to any security or against any other Person, or whether any other Person is joined in any such action or actions.

12.3 Guarantor agrees that District and Developer or the other Person may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer or any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer or the other Person or any Person.

12.4 Guarantor expressly waives, to the fullest extent permitted by law, any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Developer or any other Person with respect to the Guaranteed Obligations (other than full performance of the Guaranteed Obligations to the satisfaction of District); (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations; (c) the cessation for any cause whatsoever of the liability, in whole or in part, of Developer or any other Person (other than by reason of the timely and full performance of all Guaranteed Obligations); (d) any failure of District to marshal assets in favor of Developer or any other Person; (e) any failure of District to give notice of sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral; (f) any failure of District to comply with applicable Laws or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District, including any failure of District to conduct a commercially reasonable sale or other disposition of any collateral or other security for any obligation owed to District; (g) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations); (h) any applicable Law or other requirement which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal; (i) any failure of District to file or enforce a claim

in any bankruptcy or other proceeding with respect to any person; (j) the election by District in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person; (l) the avoidance of any lien in favor of District for any reason; (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, or dissolution proceeding commenced by or against any Person, including any discharge of, or bar, or stay against enforcing all or any of the Guaranteed Obligations (or any interest thereon) in or as a result of any such proceedings; (n) all rights or defenses Guarantor may have by reason of protection afforded to the principal with respect to the Guaranteed Obligations or to any other guarantor's obligations under its guaranty, in either case, pursuant to the anti-deficiency laws or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and (o) the right to require District to proceed under any other remedy District may have before proceeding against Guarantor. Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional obligations by Developer for which Guarantor shall be automatically responsible and liable hereunder and waives all surety and guarantor defenses, all to the fullest extent permitted by law, and thus, Guarantor acknowledges that it may essentially have no control over its ultimate responsibility for Developer's obligations guaranteed hereunder.

13. Cumulative Rights. The exercise by District of any right or remedy hereunder or under the LDA, Construction and Use Covenant, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the LDA, Construction and Use Covenant, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances.

14. Waivers and Consents.

14.1 Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for performance or the terms of the LDA or Construction and Use Covenant, pursuant to the terms thereof; (b) supplement, modify, amend, or waive, or enter into or give any agreement, approval, or consent with respect to, the LDA, Construction and Use Covenant, or any part thereof, or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder, pursuant to the terms thereof; (c) accept new or additional instruments, documents, or agreements in exchange for or relative to the LDA, Construction and Use Covenant, or any part thereof or performance pursuant thereto; (d) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (e) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (f) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (g) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (h) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (i) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person (except as permitted under the LDA) and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (j) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

14.2 Guarantor expressly agrees that until the Guaranteed Obligations are performed in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not, to the fullest extent permitted by law, be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay, or other act or omission of District, or District's failure to proceed promptly or otherwise as against Developer or any other Person, or any security;

(c) Any action, omission, or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Developer or any other Person; or

(d) Any dealings occurring at any time between Developer or any other Person, on the one hand, and District, on the other hand, whether relating to the LDA, Construction and Use Covenant, or otherwise.

(e) Guarantor waives all rights and defenses arising out of an election of remedies by District, even though that election of remedies may have destroyed Guarantor's rights of subrogation and reimbursement against Developer or any other Person, and even though that election of remedies by District has destroyed Guarantor's rights of contribution against another guarantor of any of the Guaranteed Obligations.

14.3 No provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in Sections 12 and 14.

14.4 Guarantor hereby expressly, to the fullest extent permitted by law, waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers, or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances.

15. Termination of Guaranty. Upon Final Completion of Construction, this Guaranty shall automatically terminate and be of no further force or effect.

16. No Amendment. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by District and the Guarantor to be bound by such agreement.

17. Successors. This Guaranty shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors and assigns of the parties hereto.

18. Irrevocable Survival. This Guaranty shall be irrevocable by the Guarantor until all Guaranteed Obligations have been completely and indefeasibly paid and all obligations and undertakings of Developer and of the undersigned hereunder have been completely performed.

19. Unenforceability. If any term or provision of this Guaranty shall be determined to be illegal, invalid, or unenforceable, this Guaranty and all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

20. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the Construction and Use Covenant.

21. Entire Agreement. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, commitments, representations, agreements, and understandings between the parties.

22. WAIVER OF JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY, THE LDA,

CONSTRUCTION AND USE COVENANT, OR TO THE TRANSACTIONS CONTEMPLATED BY THE AFOREMENTIONED. ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA OR THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, AND GUARANTOR AGREES THAT SUCH COURTS ARE THE MOST CONVENIENT FORUM FOR RESOLUTION OF ANY SUCH ACTION AND FURTHER AGREES TO SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY RIGHT TO OBJECT TO VENUE IN SUCH COURTS.

INITIAL HERE

INITIAL HERE

INITIAL HERE

INITIAL HERE

23. Notice. Any notice which may or is required to be given hereunder shall be deemed given three days after being deposited, registered or certified, return receipt requested, in the United States mail, addressed to the recipient at the address set forth after recipient's name below, or at such different addresses as it shall have theretofore given written notice of hereunder:

GUARANTOR:

MidAtlantic Realty Partner, LLC
3050 K Street NW, Suite 125
Washington, DC 20007
Attention: J. Richard Saas and Matthew Robinson

with a copy to:

Tenenbaum & Saas, PC
4504 Walsh Street, N.W., Suite 200
Chevy Chase, MD 20815
Attention: Melissa Cocci

DISTRICT:

Office of the Deputy Mayor for Planning and
Economic Development
1350 Pennsylvania Ave., N.W., Suite 317
Washington, DC 20001
Attention: Deputy Mayor for Planning and
Economic Development

with a copy to:

Office of the Attorney General for the District of
Columbia
441 4th Street, NW, Suite 1010 South
Washington, DC 20001
Attention: Deputy of Commercial Division

23. Counterparts. This Guaranty may be executed in counterparts, each of which shall be deemed to be an original. In proving this Guaranty it shall not be necessary to produce or account for more than one counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF Guarantors have executed this Guaranty as of the day and year first above written.

MIDATLANTIC REALTY PARTNERS, LLC
a Virginia limited liability company

By: _____
Name: _____
Title: _____

After recording please return to:

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this “**Deed**”) is made as of _____, 201__, by and between (i) the **DISTRICT OF COLUMBIA**, a municipal corporation, as the owner (collectively with its successors, assigns, agents, and representatives, “**Grantor**”), acting by and through the Office of the Deputy Mayor for Planning and Economic Development, and (ii) **SHERMAN AVENUE, LLC**, a District of Columbia limited liability company (“**Grantee**”).

RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Land Disposition Agreement, dated _____, _____ 201__, (“**LDA**”) to which Grantor and Grantee were parties relating to, inter alia, the Property, Grantee desires to receive and Grantor desires to transfer all of Grantor’s interest in real property located at 965 Florida Avenue, N.W., in the District of Columbia, and known for purposes of assessment and taxation, according to the records of the Office of Tax and Revenue in the District of Columbia, as Lot number 1102 in Square 2873, as described more fully in “**Exhibit A**,” attached hereto and made a part hereof (hereinafter the “**Property**”); and

WHEREAS, Grantor is reserving its Right to Re-Enter the Property if the Grantee violates certain covenants as hereinafter set forth.

WITNESSETH

THAT, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant unto Grantee and its successors and assigns in fee simple all of Grantor’s right, title, and interest in and to the Property, together with any and all rights Grantor has to any improvements thereon and to any land lying in the bed of any existing street, road, or alley adjoining such land, all rights, including but not limited to, all air rights, all water and mineral rights, all development rights, and all easements, rights, and other privileges and interests appurtenant thereto.

TO HAVE AND TO HOLD the above-described property unto and for the use and benefit of Grantee, its successors and assigns, in fee simple forever.

SUBJECT to the provisions of the construction and use covenant (together with any amendments thereto, the “**Construction and Use Covenant**”) and the “**Affordable Housing Covenant**,” both by and between Grantor and Grantee, dated of even date herewith and recorded among the land records of the District of Columbia (“**Land Records**”) immediately following

this Deed (together with any amendments thereto, the “**Property Covenants**”), and the Reservations set forth below unless and until terminated in accordance with their terms;

And Grantor covenants that it will warrant specially the Property hereby conveyed and that it will execute such further assurances of said Property as may be requisite.

RESERVING UNTO GRANTOR, a Right to Re-Enter the Property (the “**Right of Re-Entry**”), upon the terms and conditions set forth in **Exhibit B** to this Deed.

RESERVING UNTO GRANTOR, an easement for the maintenance, repair, and operation of a new private street on the Property, upon the terms and conditions set forth in **EXHIBIT C**

Any notice required to be given to Grantee under this Deed shall also be given to any successor in title to all or any portion of the Property, to any Mortgagee, and to any third party equity investor, all at the address or addresses designated in writing by Grantee to Grantor at the following addresses:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20001
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

The Office of the Attorney General for the District of Columbia
441 4th Street, N.W., 10th Floor South
Washington, D.C. 20002
Attn: Deputy Attorney General, Commercial Division.

[Signature Page Follows]

IN WITNESS WHEREOF, the DISTRICT OF COLUMBIA, acting by and through _____, the Deputy Mayor for Planning and Economic Development, its duly authorized representative, has caused this Deed to be executed, acknowledged and delivered for the purposes herein contained.

GRANTOR

DISTRICT OF COLUMBIA,

by and through the Office of the Deputy Mayor
for Planning and Economic Development

By: _____
Brian Kenner
Deputy Mayor for Planning and Economic
Development

Approved for Legal Sufficiency:

Xavier Beltran
Assistant Attorney General

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of July 201__ by Brian Kenner, the Deputy Mayor for Planning and Economic Development, whose name is subscribed within the instrument, being authorized to do so on behalf of the District of Columbia, has executed the foregoing and annexed document as her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

IN WITNESS WHEREOF, Grantee has caused this Deed to be executed, acknowledged, and delivered for the purposes herein contained.

GRANTEE:

SHERMAN AVENUE, LLC, a District of Columbia limited liability company

By: _____

By: _____

By: _____

Name: _____

Title: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____ 201____, by _____, _____, a District of Columbia limited liability company and Grantee herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Grantee, has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

Notary Public: _____

[Notarial Seal]

My commission expires: _____

**EXHIBIT A
(Legal Description)**

EXHIBIT B
RIGHT OF RE-ENTRY

Any capitalized terms not defined herein shall have the meaning ascribed in the Construction and Use Covenant. Subject to the notice, cure and other rights described below and on Schedule 1 attached hereto, if the Re-Entry Defaults described on Schedule 3 attached hereto occur, unless such Re-Entry Defaults are cured prior to the Re-Entry Date described below, Grantor shall have the exclusive right to declare a termination in favor of Grantor of the title and of all the rights and interests in and to the Land, any all improvements constructed thereon, and all appurtenances thereto, (collectively, the "**Property**"), or any portion thereof, and to re-enter the Property ("**Right of Re-Entry**"), at Grantor's option, upon the following terms and conditions:

- (A) Following a Re-Entry Event of Default, Grantor shall give written notice to all notice parties that Grantor has elected to exercise its Right of Re-Entry ("**Exercise Notice**"). Re-Entry shall take place unless the Re-Entry Defaults are cured, by a date designated by Grantor (the "**Re-Entry Date**"), which date shall be at least ninety (90) days but no later than one hundred twenty (120) days after the date of the Exercise Notice, unless otherwise agreed by Grantor. The Grantor agrees to provide notice to any Guarantor, any third party equity investor guarantor and/or then current Mortgagee of the Property, prior to exercising the Right of Re-entry as provided in the Construction Covenant.
- (B) On the Re-Entry Date, Grantor shall have the absolute right to execute and record among the land records of the District of Columbia a written declaration of the termination of the right, title and interest of Grantee, its successors in interest and assigns in the Property ("**Termination Declaration**"), and to re-enter and take possession of the Property "as-is, where is, with all faults", and re-vest in Grantor, the Property. Grantee agrees to deliver the documents listed on Schedule 2 within ten (10) Business Days following the Re-Entry Date.
- (C) The exercise of the Right of Re-Entry and the re-entry thereunder shall terminate all obligations and/or covenants of Grantee in the Construction Covenant, Affordable Housing Covenant, and any other Related Agreement to which Grantee is a party, except those that expressly survive termination.
- (D) Grantor's re-entry shall be effective upon recordation of the Termination Declaration among the land records of the District of Columbia.

Notwithstanding any other provision hereof, immediately upon Commencement of Construction of the Project, provided there are no Re-Entry Defaults with respect to which Grantor has given an Exercise Notice, Grantor's Right of Re-Entry shall automatically terminate and be of no further force or effect, except for the Re-Entry Default described in paragraph (a) of Schedule 3. Without limiting the generality of the preceding sentence, upon request of Grantee, Grantor shall provide written certification to Grantee that Grantor's Right of Re-Entry has terminated, which certification shall be in a form as will enable it to be recorded in the land records of the District of Columbia. Any notice to be delivered pursuant to this Deed shall be delivered in accordance with the notice provisions set forth in the Construction and Use Covenant. Further, upon Final Completion of the Project, the Grantor shall provide written certification that Grantor's Right of

Re-Entry has fully terminated, which certification shall be in a form as will enable it to be recorded in the land records of the District of Columbia.

Schedule 1

RIGHTS OF CURING PARTIES

The curing parties will be: (i) Grantee, (ii) any Guarantor under the Development and Completion Guaranty that guarantees the completion of the improvements on the Property; or (iii) any party providing or holding a financing secured in whole or in part by the Property known as a Project Lender under the Construction and Use Covenant, that Grantee designates as a curing party by providing written notice to Grantor together with a certified true copy of the mortgage or other security instrument and the name and address of such curing party.

The curing parties' rights to cure a Re-Entry Default shall be the same rights that a Project Lender would have to cure a default under the Construction and Use Covenant.

Schedule 2

DOCUMENTS TO BE DELIVERED BY GRANTEE

1. Owner's affidavit.
2. Release of liens and encumbrances.
3. Evidence of payment in full of all utilities, taxes and other assessments through the Re-Entry Date.
4. Deed.
5. Evidence satisfactory to Grantor of clear and marketable title to the Property.
6. Such other confirmatory documents as may be reasonably requested by Grantor.

Schedule 3

RE-ENTRY DEFAULTS

Any capitalized term not defined herein shall have the meaning ascribed to it in the Construction and Use Covenant. Any of the following occurrences, conditions or acts shall constitute a "**Re-Entry Default**" under this Deed:

- a. The occurrence with respect to Grantee of any of the following: (a) Grantee becoming insolvent, as the term is defined in Tittle 11 of the United States Code (the "**Bankruptcy Code**") or under the insolvency laws of any state or territory (the "**Insolvency Laws**"); (b) appointment of a receiver or custodian for any property of Grantee, or the institution of a foreclosure or attachment action upon any property of Grantee which is not dismissed within ninety (90) days after filing; (c) filing by Grantee of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Grantee as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (1) is not dismissed within ninety (90) days after filing, or (2) results in the issuance of an order for the relief against Grantee; (e) Grantee making or consenting to a general assignment for the benefit of creditors or a composition of creditors; or (f) an admission in writing by Grantee of its inability to pay debts as they become due;
- b. The levy upon or other execution or the attachment by legal process of the Grantee's fee interest in the Property, which levy or attachment shall not be released, discharged or bonded against within sixty (60) days following the date Grantee receives notice thereof;
- c. Grantee shall fail to obtain or maintain in effect any insurance required under the Construction and Use Covenant, or pay any insurance premiums, as when the same become due and payable, or fails to reinstate, maintain and provide evidence to Grantor of the insurance required to be obtained or maintained by Grantee or its contractors or subcontractors under the Construction and Use Covenant, and such failure shall continue for a period of five (5) Business Days after notice by Grantor of such failure which period shall be extended by Grantor in its reasonable discretion upon request to the extent such insurance is not available on commercially reasonable terms;
- d. Grantee makes any Transfer in violation of the terms of the Construction and Use Covenant;
- e. The occurrence of an Event of Default past applicable notice and cure periods, occurs and is continuing under the Construction and Use Covenant with respect to the Property;
- f. An "Event of Default" past applicable notice and cure periods, occurs and is continuing under that certain Development and Completion Guaranty dated as of _____, by _____.

EXHIBIT C

GRANTOR'S RESERVATION OF EASEMENT

Grantor reserves for the benefit of Grantor and all emergency service providers and all public utilities, a non-exclusive perpetual and irrevocable easement for access to, ingress and egress, over, under and across the private street on the Property ("New Street") and which shall not limit pedestrian access, vehicular traffic, the installation, maintenance, repair or replacement of public utilities or street lights, and the provision of all lawful governmental or private emergency services.

Notwithstanding the foregoing, Grantor grants to Grantee the perpetual right to close New Street to vehicular or pedestrian traffic for the sole purposes of construction, maintenance and repair of New Street or installation, maintenance, repair or replacement of public utilities or street lights.

**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:

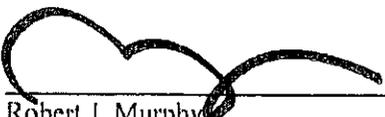
By: _____
Malik K. Edwards
Deputy General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2015

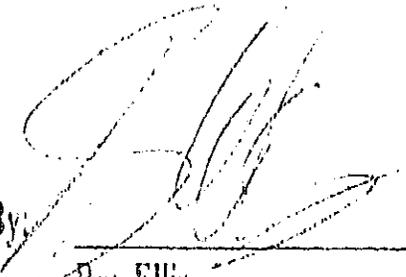
DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

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

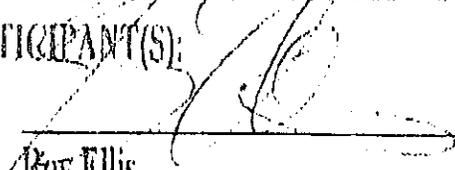
Roy Ellis

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

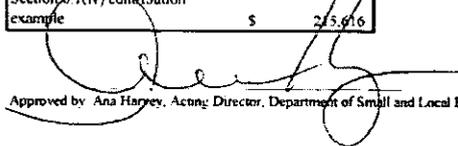
Permanent Loan	\$	63,237,531
District Subsidy	\$	-
Low-Income Housing Tax Credit Equity	\$	-
DCHA Equity	\$	-
Hope VI Subsidy	\$	-
HPAP Subsidy	\$	-
Reinvested Sales Revenue	\$	-
Total Sources of Funds:	\$	63,237,531

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 (ii) contribution example	\$	862,462
Section 6 (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

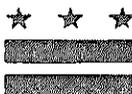
The general contractor "GC" may submit the following written documentation of its certified business enterprise "CBE" outreach and involvement efforts:

- (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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

March 26, 2015

Matthew Robinson
Principal
MRP Realty
3050 K Street, NW
Washington, DC 20007

Dear Mr. Robinson:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and Sherman Avenue, LLC. Please note that the enclosed First Source Agreement reflects legislative changes to the First Source Program which took effect on February 24, 2012. Under the terms of the Agreement, you are required to use DOES as the first source to fill all new jobs created as a result of Project: 965 Florida Avenue. The new provisions still require that 51% of all new hires be District residents on government contracts between \$300,000 and \$5 million. In addition, each construction project receiving government assistance totaling \$5 million or more is required to have the following percentage of hours worked by DC residents on those projects; 20% of journey worker hours; 60% of apprentice hours; 51% of skilled laborer hours; 70% of common laborer hours. Further, District residents registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project or 60% where applicable.

You should post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.dcnetworks.org. Please contact DeCarlo Washington at (202) 698-5772 to receive assistance with identifying qualified District residents for placement.

The First Source Program has implemented an electronic compliance database which will provide a more efficient way for employers to enter and track their monthly First Source data. If you have any questions regarding the Monthly Compliance Reporting Database, please contact DeCarlo Washington at (202) 698-5772.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Hubbard".

Drew Hubbard
Associate Director
First Source Program

Enclosure



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



GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

CONTRACT/SOLICITATION NUMBER: _____
 DISTRICT CONTRACTING AGENCY: DMPED / Private Funded
 CONTRACTING OFFICER: Marc Bleyer
 TELEPHONE NUMBER: 202.727.8929
 TOTAL CONTRACT AMOUNT: \$69,873,573
 EMPLOYER CONTRACT AMOUNT: \$69,873,573
 PROJECT NAME: 965 Florida Ave
 PROJECT ADDRESS: 965 Florida Ave, NW
 CITY: Washington STATE: DC ZIP CODE: 20001
 PROJECT START DATE: TBD PROJECT END DATE: TBD
 EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD

EMPLOYER INFORMATION

EMPLOYER NAME: Sherman Avenue, LLC
 EMPLOYER ADDRESS: c/o MRP Realty, 3050 K Street, NW, Suite 125
 CITY: Washington STATE: DC ZIP CODE: 20007
 TELEPHONE NUMBER: 202.719.9000 FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: Richard J. Saas
 TITLE: Founding Principal
 E-MAIL: rjsaas@mrprealty.com TELEPHONE NUMBER: 202.719.9000
 LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION NUMBER: _____
 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 Statistic 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.

3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.
4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.
5. Conduct desk reviews of *Monthly Compliance Reports*.
6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.
7. Monitor and complete statistical reports that identify the overall project, contractor, and sub contractors' hiring or hours worked percentages.
8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. *(Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)*

X. PENALTIES

- A. Willful breach of the Agreement by the EMPLOYER, failure to submit the Contract Compliance Reports, deliberate submission of falsified data or failure to reach specific hiring or hours worked requirements may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER. Fines will also include additional prorated fines of 1/8 of 1% of total contract amount for not reaching specific hiring or hours worked requirements. Prime Contractors who choose to report all hiring or hours worked percentages cumulatively (overall construction project) will be penalized, if hiring or hours worked percentage requirements are not met.
- B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.
- C. Appeals of violations or fines are to be filed with the Contract Appeals Board.

I hereby certify that I have the authority to bind the EMPLOYER to this Agreement.

By:


EMPLOYER Senior Official

Sherman Avenue, LLC

Name of Company

c/o MRP Realty, 3050 K Street, NW, Suite 125

Washington, DC 20007

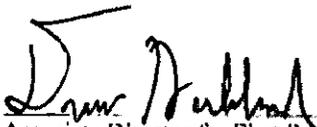
Address

202.719.9000

Telephone

bmurphy@mrprealty.com

Email


Associate Director for First Source
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
202-698-6284
firstsource@dc.gov

3/25/15
Date

EMPLOYMENT PLAN

NAME OF EMPLOYER: Sherman Avenue, LLC
 ADDRESS OF EMPLOYER: c/o MRP Realty, 3050 K Street, NW, Suite 125, Washington DC 20007
 TELEPHONE NUMBER: 202.719.9000 FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: Richard J. Saas TITLE: Authorized Member
 E-MAIL: rsaas@mrprealty.com TYPE OF BUSINESS: Real Estate

DISTRICT CONTRACTING AGENCY: DMPED / Privately Funded
 CONTRACTING OFFICER: Marc Bleyer TELEPHONE NUMBER: 202.727.8929
 TYPE OF PROJECT: Real Estate Development CONTRACT AMOUNT: \$1,400,000
 EMPLOYER CONTRACT AMOUNT: TBD
 PROJECT START DATE: TBD PROJECT END DATE: TBD
 EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD

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				

