

“**Lease**” means any lease of any portion of the Property devoted to retail uses in the ordinary course of business, and any subsequent amendments, modifications and extensions thereto, subject to the approval of District, such approval not to be unreasonably withheld, conditioned or delayed, with regard to all matters involving permitted uses under any such Lease.

“**Material Change**” means (i) any change in size or design from the Approved Construction Drawings that substantially and adversely affects the general appearance or structural integrity of exterior walls and elevations and/or building bulk; (ii) any changes in exterior finishing materials that substantially and adversely affects the architectural appearance from those shown and specified in the Approved Construction Drawings; (iii) any substantial reduction to the number of parking spaces by ten percent (10%) or more from the Approved Construction Drawings; (iv) any substantial and adverse change in the general appearance of landscape design or size or quality of exterior pavement, exterior lighting and other exterior site features from the Approved Construction Drawings; (v) any change that affects the number of ADUs, (vi) any reduction in the level of interior finishes from the Approved Construction Drawings as it relates to the ADUs, and (vii) any changes in design and construction of the Project from the Approved Construction Drawings requiring approval by a Governmental Authority.

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

“**Mortgage**” means a mortgage, deed of trust, mortgage deed, or such other classes of legal documents as are commonly given to secure advances on fee simple estates under the laws of the District of Columbia.

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

“**Operating Agreement**” means that certain Operating Agreement by and between the Members of Developer dated _____, 20__.

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

“**Permits**” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from Governmental Authorities necessary to commence and complete construction and occupancy of the Project in accordance with the Approved Construction Drawings and this Covenant.

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

“**Prohibited Person**” shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date

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

“Project” means the development and construction of approximately sixty one (61) ADUs on the Property which shall be leased to tenants whose income is not greater than sixty percent (60%) of AMI, all in accordance with the Agreement, the Affordable Housing Covenant, and this Covenant.

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

“Project Mortgage” means a Mortgage that is recorded against the Property and secures a loan held by a Project Lender that provides Developer financing to acquire, develop, construct and/or operate the Project.

“Property” is defined in the Recitals.

“Punch List Items” mean the minor items of work to be completed or corrected in order to fully complete the Project in accordance with the Approved Construction Drawings.

“Related Agreements” means the Agreement, the Affordable Housing Covenant, this Covenant and the Development and Completion Guaranty.

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

“Restricted Period” shall mean with respect to the Project, or any portion thereof, that period of time beginning on the Effective Date and ending on the date of Final Completion of the Project.

“Resubmission Period” is a period of thirty (30) days commencing on the day after Developer receives Disapproval Notice from District, or such other period of time as District and Developer may agree in writing, in their reasonable discretion. In the event either Developer or District reasonably believes that the Resubmission Period should be longer or shorter than such

thirty (30) day period, such Party shall promptly notify the other in writing of the period of time that such Party reasonably believes should apply and the reasons therefor.

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

“Schematic Plans” means the design plans that present a developed design based on the approved Concept Plans that were submitted to and approved by District prior to the Effective Date pursuant to the Agreement.

“Second Notice” means that notice given by Developer to District in accordance with Section 2.2. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a “SECOND AND FINAL NOTICE”; (b) contain the following statement: “A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION ORIGINALLY SUBMITTED ON (DATE OF DELIVERY OF SUCH SUBMISSION)]”; (c) be delivered in the manner prescribed in Section 11.1, in an envelope conspicuously labeled “SECOND AND FINAL NOTICE”

“Substantial Completion” shall occur when: (a) the applicable Governmental Authorities shall have issued a final (and not shell) Certificate of Occupancy and other necessary approvals for the use and occupancy of the Project, and (b) the Architect shall have executed an AIA Form G704 evidencing substantial completion (subject only to Punch List Items that do not interfere with the use and occupancy of the Project for its intended purposes) and stating that, in its professional opinion based on its inspections, the Project was constructed in compliance in all material respects with (1) the Approved Construction Drawings, (2) all applicable governmental requirements, and (3) all covenants, conditions, restrictions, easements, or other matters of record with respect to the title to the Project in effect as of the date thereof.

“Transfer” means any sale, assignment, conveyance, lease, sublease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of the Property, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same; provided, however, **“Transfer”** shall not be deemed to include Developer’s execution of (a) a management agreement and/or a franchise agreement with respect to the operation of the Improvements; (b) the lease of any of any of the ADUs to tenants; or (c) a lease of any space in the Improvements for retail uses in the ordinary course of business; and provided further, that any transfer by Developer or a Member of Developer to an Affiliate or another Member of Developer or in connection with an Equity Investment (as defined in the Agreement) in Developer shall not be deemed a **“Transfer”** for purposes of this Covenant. As used in this Covenant, a Transfer shall be deemed to have occurred if in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is a direct or indirect change in Control of Developer from that existing as of the Effective Date.

“Transferee” means the purchaser, assignee, transferee or lessee as a result of a Transfer.

“**Zoning Commission**” shall mean the Zoning Commission of the District of Columbia.

ARTICLE II CONSTRUCTION COVENANTS

2.1 APPROVED CONSTRUCTION DRAWINGS. Prior to the Effective Date, Developer has submitted to District, and District has approved, all of the Construction Drawings, rendering them Approved Construction Drawings pursuant to the Agreement. District’s review and approval of the Approved Construction Drawings is not, and shall not be construed as, a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Applicable Law. District shall incur no liability as a result of its review of any Approved Construction Drawings which Developer acknowledges was undertaken by District solely for the purpose of protecting its own interests.

2.2 CHANGES TO APPROVED CONSTRUCTION DRAWINGS.

2.2.1 Material Changes. No Material Changes to the Approved Construction Drawings shall be made without District’s prior written approval, except those changes required by a Governmental Authority pursuant to Section 2.2.4. If Developer desires to make any Material Changes to the Approved Construction Drawings, Developer shall submit in writing the proposed changes to District for approval, and the procedures set forth in this Section 2.2 shall apply to District’s review and approval (or disapproval) of any such proposed Material Changes.

2.2.2 Time Period for District Review and Approval. District shall complete its review of any Material Change and provide a written response thereto, within ten (10) Business Days after its receipt of the same; provided, however, the Parties may agree to allow District such longer period of time as they may mutually agree is required as a result of the complexity of the Material Change that has been submitted (a “**Complexity Extension**”) (the ten (10) Business Day review period, plus any Complexity Extension agreed to by the Parties, may be referred to as the “**Review Period**”). If District fails to respond with its written response to a submission of any Material Change within the Review Period, Developer may notify District, in writing, of District’s failure to respond by delivering to District a Second Notice. Failure of District to respond to the time period set forth in the Second Notice shall constitute District approval of the applicable Material Change.

2.2.3 Disapproval Notice. Any notice of disapproval (“**Disapproval Notice**”) delivered to Developer by District shall state the basis for such disapproval in reasonably sufficient detail so as to enable Developer to respond to District. If District issues a Disapproval Notice, Developer shall have a period of time equal to the Resubmission Period to revise the Material Change to address the comments of District and may resubmit the revised Material Change for approval by District prior to the expiration of such Resubmission Period. District shall use good faith efforts to complete its review of such revised Material Change within the Review Period applicable to such revised Material Change, which Review Period shall commence the day following District’s receipt of such revised Material Change from Developer. If District fails to

notify Developer in writing of its approval or disapproval of such revised Material Change within the Review Period, Developer may provide a written Second Notice to District with respect to such revised Material Change, and the provisions of Section 2.2.2 shall apply with respect to such Second Notice. The provisions of this Section 2.2 relating to approval, disapproval and resubmission of any submission of Material Changes shall continue to apply until such Material Changes (and each component thereof) and any Material Changes thereto have been finally approved or disapproved by District. In no event will District's failure to respond to any submission of Material Changes be deemed an approval except as otherwise expressly set forth in this Section 2.2. Any Material Changes may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any Material Changes that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

2.2.4 Government Required Changes. Notwithstanding any other provision of this Covenant to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Covenant) of any elements of a proposed change to an Approved Construction Drawing which are required by any Governmental Authority; provided, however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the Governmental Authority requiring such element or change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such Governmental Authority in seeking such modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes, as soon as reasonably possible and in no event later than ten (10) days after the submission of the Material Change, or such additional period of time granted as a Complexity Extension. Developer shall promptly notify District in writing of any changes required by a Governmental Authority whether before or during construction.

2.3 PERMITS. Prior to the Effective Date, Developer has obtained all Permits for demolition, sheeting and shoring for the Project in accordance with the Approved Construction Drawings. Developer has submitted to District copies of documents evidencing such Permits obtained by Developer.

2.4 SITE PREPARATION. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Approved Construction Drawings, including costs associated with excavation, construction of the Project, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Law.

2.5 PRE-CONSTRUCTION USE AND CONDITION. After the Effective Date and prior to Commencement of Construction, Developer may use the Property or any portion thereof for any use approved in advance by District, which approval shall not be unreasonably withheld, conditioned or delayed so long as such uses are permitted by Applicable Law. District hereby approves the use of the Property as a parking lot and parking garage entrance. Developer shall maintain the Property during such pre-construction period in good repair and condition, free of rubbish and debris, and sightly in appearance.

2.6 FINAL PROJECT BUDGET AND FUNDING PLAN. Prior to the Effective Date, Developer has submitted to District and District has approved the Final Project Budget and Funding Plan. Developer shall be permitted to modify the Final Project Budget and Funding Plan with District's approval, as may be reasonably necessary to construct the Improvements in accordance with the Approved Construction Drawings, provided that the Development and Completion Guaranty shall remain in full force and effect. Notwithstanding anything else in this Covenant to the contrary, Developer may modify the Final Project Budget and Funding Plan without District's approval if such modifications are as a result of non-Material Changes to the Approved Construction Drawings.

2.7 [Intentionally Deleted]

2.8 CONSTRUCTION OBLIGATIONS

2.8.1 Obligation to Construct. Developer hereby agrees to develop and construct the Project in accordance with the Approved Construction Drawings, the Schedule of Performance and this Covenant. Developer agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Approved Construction Drawings and the Schedule of Performance.

2.8.2 Compliance with Laws. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

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

2.8.4 Costs. The cost of development and construction of the Project thereon shall be borne solely by Developer.

2.8.5 Signs. At all times during construction of the Project, Developer, at its sole expense, shall have in place at the Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Developer shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall be subject to District's approval, which approval shall not be unreasonably conditioned, withheld or delayed. In order to gain District's

approval of any sign design, Developer shall submit plans of such signs to District in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities of such signs. Developer shall comply with all Applicable Law regarding the installation of signage at the Property.

2.9 COMMUNITY PARTICIPATION PROGRAM. Prior to the Effective Date, Developer submitted, and District approved, Developer's Community Participation Program. Pursuant to the Community Participation Program, Developer is required to: (a) document all ANC and other community organization meetings to provide a narrative description of the events of each meeting, including the concerns raised by the ANC and other community organizations and Developer's responses to those concerns; (b) provide documentation of the ANC and other community organization meetings to District within thirty (30) days after the end of each calendar month; and (c) include a summary of each ANC and other community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries may be made available to the public by District. Developer shall comply with the Community Participation Program and the requirements of this Section 2.9 until issuance of the Final Certificate of Completion.

2.10 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of the Project Lender(s) and any applicable District of Columbia building and health code requirements, District shall have the following rights:

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

2.10.2 Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following the Effective Date and continuing each month thereafter until issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto as Exhibit D (the "**Compliance Form**"), as such form may be amended from time-to-time by District (provided such amendment is of general application). Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which Developer shall execute within

twenty-four (24) hours following Developer's receipt of the report from District, but in no event later than the last day of the subject month.

2.10.3 Progress Reports.

(a) In addition to the submission of the Compliance Form in accordance with Section 2.10.2, beginning on the 15th day of the month following the Effective Date and no later than the 15th day of each calendar month thereafter until issuance of the Final Certificate of Completion, Developer shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Developer; (2) a budget and cost update report; (3) an unaudited financial schedule; (4) a report on the leasing of the ADUs in the Project; (5) a report on the leasing of the retail space, if any, in the Project; and (6) a current construction schedule for the Project;

(b) Developer shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s).

2.10.4 Progress Meetings. District and Developer shall hold such periodic progress meetings as District deems reasonably appropriate, from time to time and at any time, to consider the progress of Developer's construction of the Project.

2.10.5 Construction Consultant. On or before the Commencement of Construction and continuing through District's issuance of the Final Certificate of Completion, Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval), on such terms as District may approve (provided such terms shall be reasonable in the context of the scope of the Project), to: (a) report to District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (b) review and approve whether the construction of the Project is consistent with the requirements of this Covenant, and (c) review and report to District on District's issuance of the Final Certificate of Completion. The Construction Consultant shall receive timely reports from the Architect and Developer, as necessary, and shall promptly report any issues or problems to District and Developer. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Final Approved Project Budget. Any construction consultant engaged by the primary lender for supervision of construction of the Project shall be considered the Construction Consultant hereunder, provided that such construction consultant agrees in writing with District to undertake the duties of the Construction Consultant set forth in this Section 2.10.5.

2.10.6 Books and Records; Audit Rights.

(a) Developer shall keep proper books of records and accounts which include full, true, and correct entries of all dealings and transactions in relation to the Project. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied and in compliance with Applicable Law.

(b) Upon reasonable prior notice at any time after the Effective Date, District shall have the right (at the cost of District, unless an Event of Default has occurred and is continuing, in which event such expense shall be borne by Developer) to inspect the books and records of Developer for the purpose of ensuring compliance with this Covenant and to have an independent audit of the Project documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the D.C. Procurement Practices Act, and shall execute a separate engagement letter with District to undertake the audit. In the event that the audit reveals any material default under the terms of this Covenant, whether or not such material default is cured, Developer shall be responsible for payment of all costs and expenses incurred by the common accountant in connection with the audit or, at District's election, Developer shall reimburse District in the amount of the costs and expenses incurred by District and paid to the common accountant.

2.11 MILESTONE NOTICES. Upon completion of each milestone in the Schedule of Performance, Developer shall notify District, and District shall have thirty (30) days to inspect the Property and certify Developer's completion of such milestone.

2.12 COMPLETION OF PROJECT.

2.12.1 Developer's Certificate of Completion. Promptly after Developer achieves Substantial Completion of the Project, Developer shall furnish District with a Developer's Certificate of Completion, in which Developer states under oath that: (a) Developer has achieved Substantial Completion of the Project; (b) the Project has been completed, subject only to Punch List Items, in accordance with the Approved Construction Drawings, Permits and all Applicable Law; (c) all of the construction covenants contained herein have been fully satisfied; and (d) Developer has obtained a Certificate of Occupancy for the Project.

2.12.2 Final Completion.

(a) Developer shall achieve Final Completion on or before the date indicated in the Schedule of Performance. Within five (5) days after Developer achieves Final Completion, Developer shall deliver to District (i) a certificate, certifying under oath, that all Punch List Items have been completed or that an escrow account has been established to complete such items, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Developer has received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (ii) a certificate from the Contractor that the Project has been completed pursuant to the construction contract and in accordance with the Approved Construction Drawings. Developer shall deliver to District a complete set of "as-built" drawings (including all field notations and corrections) of the Improvements, in such format as is acceptable to District within ninety (90) days of Developer's achievement of Final Completion.

(b) District shall have thirty (30) days after receiving the materials in Section 2.12.2(a) to inspect the Project and approve of the Final Completion in writing (once approved, District shall issue the Final Certificate of Completion), or provide Developer with a written objection, setting forth in detail the grounds for such objection. If District fails to either approve of the Final Completion or object to Developer's submissions in Section 2.12.2(a) within the thirty (30) day period, District shall be deemed to have approved of the Final Completion and District shall be deemed to have issued the Final Certificate of Completion. If District objects to Developer's submissions in Section 2.12.2(a) within the aforesaid thirty (30) day period, Developer and District shall work diligently and in good faith to resolve any disputed issues within thirty (30) days following the date of District's written objection notice. If, despite such efforts, District and Developer are unable to resolve all disputed issues within said thirty (30) day period, the Construction Consultant shall resolve the disputed issues. The Construction Consultant shall issue its determination in a written report which shall be binding upon District and Developer.

2.12.3 No Representation. District's issuance of a Final Certificate of Completion does not relieve Developer or any other Person from complying with any and all Applicable Law, Permits and requirements of Governmental Authorities. The issuance of a Final Certificate of Completion shall not be deemed an approval, warranty or other certification as to the compliance with the Improvements, or any portion thereof, or the Property with any Applicable Law.

ARTICLE III INSURANCE OBLIGATIONS

3.1 INSURANCE COVERAGE PRIOR TO COMPLETION OF THE PROJECT. At all times after the Effective Date until issuance of the Final Certificate of Completion, Developer shall carry and maintain in full force and effect, or if approved by District may cause its Contractor, Architect, subcontractors and/or other consultants, as applicable, to carry and maintain in full force and effect, the following insurance policies:

(a) **Builder's Risk Insurance** – Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under the Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors. All builder's risk insurance shall name District as a named insured.

(b) **Automobile Liability and Commercial General Liability Insurance** - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability

for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(c) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(d) Professional Liability Insurance - During development of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

(e) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

3.2 GENERAL POLICY REQUIREMENTS. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

3.3 PAYMENT OF PREMIUMS; RENEWAL. All premiums and charges for all insurance policies required under this Article III shall be paid by Developer or Developer's Contractor, Architect, subcontractors and/or other consultants, as applicable. At least fifteen (15) days prior

to the expiration of each insurance policy required hereunder, Developer shall pay, or cause to be paid, the premiums for the renewal of such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Developer (or Developer's Contractor, Architect, subcontractors and/or other consultants, as applicable) fails to pay any such amounts when due or fails to carry any such policies pursuant to this Article III, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Developer notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Developer within ten (10) Business Days after District's demand therefor or shall bear interest at the Default Rate until paid.

ARTICLE IV COVENANTS REGARDING USE OF THE PROPERTY

4.1 USE OF PROPERTY. The Property shall be used in accordance with Applicable Law and Governmental Approvals for multifamily residential and related retail purposes, subject to the provisions of this Covenant and the Affordable Housing Covenant, to the extent applicable.

ARTICLE V OTHER COVENANTS

5.1 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

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

agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant's services shall be conducted at Developer's sole cost and expense.

5.1.2 Release. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by District. If an alleged Environmental Claim arises and Developer disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant's services shall be conducted at Developer's sole cost and expense.

5.1.3 Disposal Plan. From and after the Effective Date, in the event Developer or any Developer's Agent disturbs, removes or discovers any materials or waste from the Property, which are determined to be Hazardous Materials, in addition to any notices that may be required by Applicable Law, Developer shall notify District within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, Developer shall promptly develop a plan for disposal of the Hazardous Materials (the "**Disposal Plan**"). The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the manner in which the Hazardous Materials are to be removed and disposed of. Developer shall remove and dispose of all Hazardous Materials in accordance with all Applicable Law. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. In the event of a termination of this Covenant, neither Developer nor any of Developer's Agents shall have any continuing liability or obligations regarding the Disposal Plan or the removal or remediation of any Hazardous Materials on the Property not caused by Developer or Developer's Agents; provided, however, notwithstanding such termination, Developer shall complete any disposal actions it had begun prior to such termination (District agrees that the mere monitoring and/or discovery of Hazardous Materials shall not, in and of itself, be deemed to constitute the commencement of disposal actions) and shall take such other actions so as to rectify any conditions impeding the safety and security of the Property that were created or arose after the Effective Date and were not caused by District or any of District's agents, officers, directors, contractors or employee, and this obligation shall survive termination of this Covenant until such completion.

5.2 LABOR/EMPLOYMENT COVENANTS.

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

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

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

5.3 NONDISCRIMINATION EMPLOYMENT COVENANTS

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

5.3.2 Covenant not to Discriminate in Employment. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or

other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Project.

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

5.3.4 Solicitations for Employment. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

5.3.5 Enforcement. If Developer fails to comply with the nondiscrimination covenants of this Section 5.3 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

5.4 OPPORTUNITY FOR TRAINING AND EMPLOYMENT. District requires that priority for training and employment opportunities be given to residents of the District of Columbia in accordance with Applicable Law. In accordance therewith, Developer shall comply with all applicable requirements of Mayor's Order 83-265, D.C. Law 5-93, as amended, D.C. Law 14-24, and all applicable labor and employment standards, laws, regulations and orders in the construction and operation of the Project. In addition to any other requirements of Applicable Law, Developer covenants that it shall comply with the First Source Agreement.

5.5 OPPORTUNITY FOR CERTIFIED BUSINESS ENTERPRISES. Developer covenants that it is in compliance and shall continue to comply with the CBE Agreement, the requirements of the CBE Act, including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a), and all other Applicable Law regarding economic inclusion and the utilization of CBEs.

5.6 DISTRICT SECURITY FOR PERFORMANCE

5.6.1 Development and Completion Guaranty.

(a) On or before the Effective Date, Developer has delivered the Development and Completion Guaranty to District to secure Developer's performance of the provisions of this Covenant through District's issuance of the Final Certificate of Completion. In the event Developer fails to perform any of its obligations contained in these Covenants, District may

require the Guarantor, in accordance with the terms of the Development and Completion Guaranty, to perform Developer's obligations.

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred that materially impacts, or could threaten to materially impact, the Guarantor's ability to perform under the Development and Completion Guaranty, Developer shall, within thirty (30) days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Such replacement Guarantor(s) shall execute and deliver to District a Development and Completion Guaranty in the same form as originally delivered to District.

ARTICLE VI ASSIGNMENT AND TRANSFER; OPERATING AGREEMENT

6.1 ASSIGNMENT AND TRANSFER. Up until the time that Final Completion of the Project occurs, Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Covenant, or delegate its obligations under this Covenant, or otherwise effect a Transfer or suffer a Transfer to occur, without District's prior written approval, which may be granted or denied in District's sole discretion; provided, however, the foregoing restriction on Developer's assignment of its rights and delegation of its obligations under this Covenant shall not be deemed to prohibit Developer from engaging the Contractor, Architect and such other subcontractors and consultants as may be necessary for Developer to fulfill its obligations under the Agreement and this Covenant. After Final Completion of the Project, Developer may assign the Property (or portions thereof) or otherwise Transfer the Property without District's prior written approval.

6.2 AMENDMENT OF OPERATING AGREEMENT. Prior to Final Completion of the Project, Developer shall not materially amend the Operating Agreement or otherwise materially modify the relationship between the Members (including, but not limited to, the Members' respective financial interests in Developer) without the prior written approval of District. District's approval of a proposed amendment to the Operating Agreement shall be within District's sole discretion. Notwithstanding the foregoing, the Operating Agreement may be amended without District's approval, if the purpose of the amendment is to document or otherwise confirm any arrangement not included within the definition of "**Transfer**" in this Covenant.

ARTICLE VII INDEMNIFICATION

Developer shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer or Developer's Agents; provided however, that the

foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of any of the Indemnified Parties.

**ARTICLE VIII
TERM; RELEASE**

8.1 TERM OF CONSTRUCTION RELATED COVENANTS. The provisions of Article II, Article III and Section 5.6 of this Covenant shall remain in effect until the date on which District issues the Final Certificate of Completion.

8.2. TERM OF CERTAIN OTHER COVENANTS.

8.2.1 Term of Indemnification and Employment Covenants. The provisions of Section 5.1, Section 5.2, Section 5.3, and Article VII of this Covenant shall run with the land and otherwise remain in effect until this Covenant terminates pursuant to Section 8.4 of this Covenant. The provisions of Section 5.4 and Section 5.5 of this Covenant shall be governed by the First Source Agreement and the CBE Agreement, respectively.

8.2.2 Term of Use Covenant. The term of the use covenant set forth in Section 4.1 shall continue for the term of this Covenant.

8.2.3 Term of Assignment and Transfer and Operating Agreement Covenants. The provisions Article VI of this Covenant shall run with the land and otherwise remain in effect until expiration of the Restricted Period.

8.3 RELEASE. At the request of either Party and provided that there is no dispute as to the expiration of the term, the Parties shall execute a Release. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting Party. The non-requesting Party shall then have ten (10) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

8.4 TERMINATION OF COVENANT. Notwithstanding anything to the contrary contained in this Covenant or the Agreement (i) in no event shall this Covenant be effective beyond the date that is fifteen (15) years from the date of expiration of the Restricted Period, and (ii) if a party no longer owns an interest in the Property, such party shall have no further obligation under this Covenant, provided that all obligations and liabilities of such party are assumed by the party's assignee or transferee.

**ARTICLE IX
DEFAULT AND REMEDIES**

9.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Developer:

- (a) Developer fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for thirty (30) days after notice of such default from District;
- (b) Developer defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Developer pursuant to this Covenant and such Events of Default expressly set forth in this Section 9.1), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional one hundred twenty (120) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;
- (c) Developer fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained and such failure continues for ten (10) Business Days after written notice from District;
- (d) An event of default occurs under any Related Agreement beyond any applicable notice and cure period; and
- (e) Developer commits any affirmative act of insolvency or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

9.2 REMEDIES.

9.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

- (a) District may exercise its remedies or options under the Development and Completion Guaranty;

- (b) District may cure Developer's Event of Default, at Developer's sole cost and expense. Developer shall pay to District an amount equal to its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor. Any such sums not paid by Developer within ten (10) Business Days after demand shall bear interest at the Default Rate, until paid;
- (b) District may pursue specific performance of Developer's obligations hereunder;
- (c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief.

9.2.2 If the Event of Default arises from Developer's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full. Under no circumstances shall Developer be liable for any consequential, punitive or special damages.

9.2.3 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation.

ARTICLE X CASUALTY

In the event of damage or destruction to the Project following the Effective Date, but prior to District's issuance of the Final Certificate of Completion, Developer shall be obligated to promptly repair or restore the Project in conformity with the Approved Construction Drawings, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion. Notwithstanding anything in this Covenant to the contrary, District shall not issue the Final Certificate of Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations. The foregoing restoration obligations are subject to (i) the availability of insurance proceeds to perform the repair or restoration, provided Developer has maintained the insurance required by this Covenant, and (ii) a Project Lender's rights under a Project Mortgage.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 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 overnight commercial courier service to the Parties at the following addresses:

DISTRICT:

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

With a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, N.W., 10th Floor South
Washington, D.C. 20001
Attn: Deputy Attorney General, Commercial Division

DEVELOPER:

MLK DC AH Developer, LLC
c/o The Peebles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 33134
Attn: Lowell Plotkin, General Counsel

With a copy to:

Debra D. Yogodzinski, Esq.
Rogers Yogodzinski LLP
1129 20th Street, NW, Suite 300
Washington, DC 20036

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date refused.

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

11.3 AMENDMENT OF COVENANT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

11.4 GOVERNING LAW; FORUM FOR DISPUTES. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles). District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. District and Developer 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 (a) the courts of the District of Columbia and (b) the United States District Court for 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.

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

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

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

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

11.9 SEVERABILITY. If any provision of this Covenant is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Covenant shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Covenant, and the remaining provisions of this Covenant shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Covenant. Furthermore, there shall be added automatically as a part of this Covenant a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.10 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant. In the event of any conflict between the Exhibits or the Schedules and this Covenant, this Covenant shall control. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the

Parties. This Covenant constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof.

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

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

11.13 FORCE MAJEURE DELAYS. Developer shall not be considered in default to perform its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) Developer shall have first notified, within twenty (20) days after it becomes aware of the beginning of any such Force Majeure event, District in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; and (b) Developer must take commercially reasonable actions to minimize the delay. If Developer requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Developer to reasonably demonstrate that the delay was caused specifically by a Force Majeure event.

11.14 SINGULAR AND PLURAL USAGE; GENDER. Whenever the sense of this Covenant so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

11.15 RECORDATION. It is the intent of the Parties to record this Covenant in the Land Records.

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

11.17 WAIVER OF TRIAL BY JURY. 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 AND MATTERS CONTEMPLATED HEREBY.

11.18 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, including, without limitation, any releases contemplated by and in accordance with the terms of this Covenant.

11.19 NO UNREASONABLE RESTRAINT. Developer hereby acknowledges and agrees that the restrictions set forth in this Covenant do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

11.20 DISCRETION. Unless explicitly provided to the contrary in this Covenant in each instance, where either party has the right to approve or consent to any matter herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

11.21 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No official or employee of District shall participate in any decision relating to this Covenant which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

11.22 NO WAIVER BY DELAY; WAIVER. Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Covenant, shall not operate as a waiver of such rights or to deprive such Party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Covenant shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

[Signatures on following pages]

IN WITNESS WHEREOF, District has, on this ____ day of _____, 20__, caused this Construction and Use Covenant to be executed, acknowledged and delivered by _____, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

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

By: _____
Name:
Title: Deputy Mayor for Planning and Economic
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__ by _____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

DEVELOPER:

MLK DC AH DEVELOPER, LLC, a Delaware limited liability company

R. Donahue Peebles, Jr.
Authorized Signatory

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____, the Managing Member of MLK DC AH Developer, LLC, a Delaware limited liability company, Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBITS:

EXHIBIT A	Legal Description of Property
EXHIBIT B	Schedule of Performance
EXHIBIT C	Community Participation Program
EXHIBIT D	Compliance Form

COUNCIL DRAFT

Exhibit F
Council Term Sheet

COUNCIL DRAFT

Exhibit G
First Source Agreement(s)

COUNCIL DRAFT

Exhibit H-1
Project Development Plan

COUNCIL DRAFT

Exhibit H-2
Affordable Housing Development Plan

COUNCIL DRAFT

Exhibit I
Deed

EXHIBIT I

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“**Deed**”) is made as of the ___ day of ___, 201_, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation (“**GRANTOR**”), pursuant to the authority contained in D.C. Official Code §10-801 and **TPC 5TH & I PARTNERS, LLC**, a District of Columbia limited liability company (“**GRANTEE**”).

WITNESSETH, that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee and its successors and assigns, in fee simple, all of the right, title and interest of Grantor in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, and together with any right, title and interest of Grantor in and to strips or gores, situate, lying and being in the District of Columbia, described as follows, to wit:

All that certain lot, piece or parcel of land, together with all improvements thereon, situate, lying and being in the District of Columbia, said lot or parcel and all of Lot 0059, Square 0516 is duly recorded in Deed Book ___ at Page __, as recorded among the land records of the District of Columbia as more particularly described as:

[INSERT HERE FINAL LEGAL DESCRIPTION]

TO HAVE AND TO HOLD the same unto and for the use of Grantee, its successors and assigns, in fee simple, forever;

SUBJECT to the provisions of that certain Construction and Use Covenant (the “**Construction Covenant**”) by and between Grantor and Grantee of even date herewith and recorded immediately following this Deed and the Grantor’s Right of Re-Entry contained in Schedule A, which is attached hereto and incorporated herein (the “**Right of Re-Entry**” or “**Right to Re-Enter the Property**”);

AND Grantor covenants that it has the right to convey said Land to Grantee, that it will warrant specially said Land, and that it will execute such further assurances of said Land as may be requisite.

[Signature page follow(s)]

**SCHEDULE A
RIGHT OF RE-ENTRY**

TERMS AND CONDITIONS OF THE RIGHT OF RE-ENTRY

Any capitalized terms not defined herein shall have the meaning ascribed thereto in the Construction Covenant.

Grantor shall have the Right to Re-Enter the Property at the price originally conveyed, plus any then outstanding amounts secured by the Property that have been approved by the Grantor, for a period that shall end upon the date that Grantor issues or is deemed to have issued its Final Certificate of Completion under the Construction Covenant (the “**Re-Entry Period**”). Grantor may exercise its Right to Re-Enter the Property only if: (a) Grantee constructs any improvements on the Property that are materially and substantially different from the improvements specified in the Construction Plans and Specifications approved by Grantor pursuant to the Construction Covenant; or (b) Grantee defaults under either the LDDA or the Construction Covenant after the date of this Deed after lapse of all applicable notice periods and opportunities to cure after a noticed default.

Notwithstanding anything to the contrary contained in this Deed, the Right of Re-Entry is subject to the following terms and conditions:

1. Grantor may exercise its Right to Re-Enter the Property pursuant to the reservation therefor set forth in this Deed by giving written notice to Grantee that Grantor has elected to exercise such right (“**Re-Entry Notice**”). The Re-Entry Notice shall specify the violation or default by Grantee. Grantee shall have a sixty (60) day opportunity to cure the violation or default specified in the Re-Entry Notice (such sixty (60) day period, and any permitted extension thereof, is hereinafter referred to as the “**Cure Period**”). The foregoing specified sixty (60) day Cure Period notwithstanding, if the violation cannot reasonably be cured within such sixty (60) day period, then Grantee shall have such additional time as is reasonably necessary to cure the violation, but in no event more than one hundred eighty (180) days in the aggregate after the date of transmission of the Re-Entry Notice, so long as Grantee commences the cure and advises Grantor in writing within the initial sixty (60) day Cure Period that additional time is required to cure and thereafter diligently pursues such cure to completion. If Grantee should fail to cure any violation within the Cure Period, then Grantor shall complete its reacquisition of the Property, should it decide to proceed to do so, on a date (“**Re-Entry Date**”) that is no later than one hundred eighty (180) days following the expiration of the Cure Period; provided that the period for reacquisition may be extended as a result of bankruptcy, litigation, other judicial proceeding involving Grantee and/or the Property, or as a result of Grantor refraining from acting on its Right of Re-Entry pursuant to Section 4 below. Notwithstanding anything to the contrary contained in this Deed, Grantor shall have no Right to Re-Enter the Property if the violation giving rise to Grantor’s right to reacquisition is cured prior to the Re-Entry Date.

2. On the Re-Entry Date, Grantor shall have the 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 and terminate, and re-vest in Grantor, the Property. The Termination Declaration shall contain an affidavit affirming: (a) the

existence of the violation or default entitling Grantor to exercise the Right to Re-Enter the Property; and (b) Grantor's payment of the price hereinabove required to be paid. Grantee shall deliver such documents as Grantor's title insurance company reasonably shall require to evidence such termination, and the affidavits, indemnities and other agreements reasonably required by Grantor's title insurance company in connection with insuring title to the Property, subject to any easements, covenants and other like matters of title encumbering the fee interest in the Property that exist as of the date of this Deed or, if placed on the Property subsequent to the date of this Deed, are reasonably required to complete the Project in accordance with the Construction Plans and Specifications and are permitted under the Property Covenants. Real property taxes, assessments, and water and sewer charges shall be adjusted and apportioned as of the Re-Entry Date. Grantee shall pay the deed transfer tax, the cost of preparation of the Termination Declaration, all recording taxes and charges, and title examination, survey and title insurance fees. Grantor shall be entitled to draw on the Letters of Credit (as such term is defined in the Construction Covenant) for paying the sums due from Grantee hereunder.

3. If Grantor fails to Re-Enter the Property within the Re-Entry Period, Grantee, or its successors or assigns as the fee simple owner of the Property, shall be entitled to use the Property or to sell, convey, or otherwise dispose of the Property free and clear of the Right of Re-Entry and for use in a manner that is consistent with the designation of the Property on (1) the Generalized Land Use Maps adopted pursuant to D.C. Official Code § 1-301.63, (2) the Official Zoning Map of the District of Columbia adopted pursuant to D.C. Official Code § 6-641.01, and (3) the covenants and restrictions set forth in the Construction Covenant.

4. The foregoing provisions notwithstanding, Grantor shall refrain from exercising its Right to Re-Enter the Property for so long as (a) the holder of any mortgage or deed of trust encumbering the Property that has been approved by Grantor pursuant to the LDDA or the Construction Covenant (a "**Mortgagee**"), (b) the assignee of any such Mortgagee, (c) any third party equity investors of Grantee that have a right to take over the development of improvements on the Property pursuant to a written agreement to which the Mortgagee is either a party or has assented in writing and are identified in writing by Grantee to Grantor ("**Third Party Equity Investor**"), or (d) the Guarantor, notifies Grantor in writing prior to the expiration of the Cure Period of its intent to complete construction of the improvements on the Property in accordance with the LDDA and the Construction Covenant and, following the Cure Period if the violation is not cured, proceeds diligently and in good faith to exercise its rights against Grantee and to complete construction of the improvements on the Property in accordance with the LDDA and the Construction Covenant. If more than one of the parties listed in (a)-(d) above notifies Grantor prior to the expiration of the Cure Period of its intent to complete construction of the improvements on the Property in accordance with the LDDA and the Construction Covenant, unless and until all such respondents provide written notice to Grantor of their appointment of one of them, or a third party agent or designee, as the person responsible for acting on behalf of all of such respondents, Grantor shall deal solely with Mortgagee that enjoys the senior mortgage lien priority and Grantor shall be permitted to disregard any notice that is not from such Mortgagee. Notwithstanding anything to the contrary contained herein, the date by which Final Completion of the Project must be achieved as set forth in the Construction Covenant shall be deemed extended by no greater than the 180 Day Cure Period provided herein.

5. The Right to Re-Enter the Property hereunder shall automatically terminate and be void and of no further force or effect after Grantor has issued, or has deemed to have issued, the Final Certificate of Completion pursuant to the Construction Covenant.

6. Upon the release of the Right of Re-Entry provided for in this Deed, Grantor and Grantee shall file a certificate in the land records of the District of Columbia in the form attached as **Schedule B** releasing the Right of Re-Entry.

SCHEDULE B
FORM OF RELEASE

Reference is hereby made to that certain Right of Re-Entry reserved to the District of Columbia (the “**District**”) in that certain Special Warranty Deed conveying the real property in Washington, D.C. known as Lot ____ in Square _____, and more particularly described in Schedule A attached hereto, dated as of _____, 20[___], recorded among the District of Columbia Land Records as Instrument Number _____ (the “**Deed**”). Capitalized terms used and not defined herein shall have the meaning assigned in the Deed.

Pursuant to the Deed, upon the occurrence (or failure to occur) of certain circumstances specified in Schedule A to the Deed, the District was granted a Right of Re-Entry. The Deed further provided that upon the satisfaction or waiver of certain conditions set forth in the Deed, the Right of Re-Entry shall terminate and be released and of no further force or effect.

Grantor is satisfied that Grantee has satisfied the requirements for the release of the Right of Re-Entry and hereby terminates and releases its Right of Re-Entry under the Deed with respect to the Property.

[Signature appears on the following page]

IN WITNESS WHEREOF, _____,
the _____ has, on this ____ day of
_____, 20[___], caused this Release of Right of Re-Entry to be executed,
acknowledged, and delivered by _____, its
_____ on its behalf for the purposes therein contained.

THE DISTRICT:

WITNESS:

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

By: _____
Deputy Mayor for Planning and
Economic Development

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of
_____, 20[___] by _____, the Deputy Mayor for Planning
and Economic Development, whose name is subscribed to the within instrument, being
authorized to do so on behalf of the District of Columbia, acting by and through the Office
of the Deputy Mayor for Planning and Economic Development, has executed the foregoing
and annexed document as his free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

Approved for legal sufficiency

By: _____

COUNCIL DRAFT

Exhibit J
Schedule of Performance

COUNCIL DRAFT

Exhibit K
Right of Entry Agreement

COUNCIL DRAFT

Exhibit L-1
Project Funding Plan

COUNCIL DRAFT

Exhibit L-2
Affordable Housing Funding Plan

COUNCIL DRAFT

Exhibit M-1
Project Budget

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Exhibit M-2
Affordable Housing Project Budget

COUNCIL DRAFT

Exhibit N-1
Form of Development and Completion Guaranty for the Project

Exhibit N-1

FORM OF DEVELOPMENT AND COMPLETION GUARANTY [PROJECT]

THIS DEVELOPMENT AND COMPLETION GUARANTY (“**Guaranty**”) is made as of [_____], 20__, by [_____], a [_____], a [_____] (each, a “**Guarantor**” and collectively, the “**Guarantors**”), 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 (“**District**”). [If a single Guarantor, references to Guarantor and other appropriate provisions shall be modified to reflect the single Guarantor.]

RECITALS:

WHEREAS: District and TPC 5th & I Partners, LLC, a District of Columbia limited liability company (“**Developer**”), together with MLK DC AH Developer, a Delaware limited liability company (“**Affordable Housing Developer**”), an affiliate of Developer, have entered into a certain Land Disposition and Development Agreement, dated as of [_____], 20__ (the “**Development Agreement**”), pursuant to which, among other things, District has agreed to convey to Developer the Property, and Developer has agreed to develop the Project on the Property.

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

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

1. Recitals; Definitions.

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

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

2. Representations and Warranties.

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

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

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

(c) such Guarantor (if such Guarantor is not a natural Person) 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) such 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 such Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law);

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

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

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

(i) neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of such Guarantor contains any untrue statement

of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

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

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

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

(m) such Guarantor is not a Prohibited Person; and

(m) all financial statements delivered to District at any time by or on behalf of such 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 (if any such Guarantor is not a natural Person) (or other accounting principles as District may agree to in its sole and absolute discretion) consistently applied, and there has been no Material Adverse Change in the financial position of such Guarantor since the respective dates of (or periods covered by) such statements, and without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually by Guarantor and not jointly with any spouse or other Person.

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

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

3. Guaranty.

3.1 Each Guarantor hereby absolutely and unconditionally, and jointly and severally, guarantees to District and its successors and assigns: (i) the commencement and completion of

the construction of the Project through Final Completion pursuant to the terms and conditions of the Construction and Use Covenant (including, without limitation, in accordance with the Approved Construction Drawings) , and within the time period allotted therefor in the Schedule of Performance attached as an Exhibit to the Construction and Use Covenant, as said Approved Construction Drawings and Schedule of Performance may be revised and/or modified from time to time in accordance with the Construction and Use Covenant, (ii) that Developer shall keep the Property and the Project free and clear of all liens (other than liens in favor of an Approved Mortgagee), claims of lien and other claims connected with or arising out of the construction or completion of the Project and (iii) pay in full all amounts due to any contractor, subcontractor, materialman, laborer, any employee or other Person who is engaged at any time in work or supplying materials in connection with the construction of the Project (collectively, the “**Guaranteed Obligations**”).

3.2 In the event of any default by Developer under the Construction and Use Covenant that continues beyond the expiration of any applicable notice and/or cure period, each Guarantor agrees, upon request by District, at such Guarantor’s option either: (a) to assume [joint and several] responsibility for the performance of the Guaranteed Obligations, prior to the date of Final Completion for the Project specified in the Construction and Use Covenant, and to pay all costs and expenses in connection therewith, at Guarantor’s own cost and expense; or (b) to cure any default by Developer (to the extent such default arises from a failure by Developer to perform the Guaranteed Obligations), to the extent curable. Without limiting the generality of the foregoing, each Guarantor agrees that if any mechanic’s or materialmen’s liens should be filed, or should attach, with respect to the Property by reason of the construction of the Project, within the shorter of thirty (30) days and any time period(s) specified by any Approved Mortgagee after any Guarantor is advised of the filing of such liens, such Guarantor shall cause the removal or waiver of such liens, or the posting of security against the consequences of their possible foreclosure. So long as any Guarantor timely complies with the immediately preceding sentence, each Guarantor shall have the right to contest in good faith any claim, lien or encumbrance, provided that such Guarantor does so diligently and without prejudice to District or delay in the Final Completion of the Project.

4. **Reports.**

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

of such Guarantor as of the respective dates thereof, and (iii) shows all direct and contingent material liabilities of such Guarantor as of such dates.

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

4.3 From time to time promptly after District's request, but no more frequently than quarterly, except during the existence of an uncured Guaranty Event of Default Guarantor shall deliver to District such additional information, reports and statements regarding the business operations and financial condition of such Guarantor as District may reasonably request.

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

6. **No Release or Waiver.**

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

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- (a) amend, change or modify, in whole or in part, the Construction and Use Covenant;
- (b) waive any terms, conditions or covenants of the Construction and Use Covenant, or grant any extension of time or forbearance for performance of the same;
- (c) compromise or settle any amount due or owing, or claimed to be due or owing, under the Construction and Use Covenant;
- (d) surrender, release or subordinate any or all security for the Construction and Use Covenant, or accept additional or substituted security therefor; and
- (e) release, substitute or add guarantors of the Construction and Use Covenant.

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

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

7. **Relief from Automatic Stay.** If: (i) a default by Developer has occurred under Section 6.1(b) of the Construction and Use Covenant; and (ii) the automatic stay imposed by the applicable provisions of the Bankruptcy Code, as amended, or under any other applicable law, against the exercise of the rights and remedies otherwise available to creditors of the Developer is deemed by the court having jurisdiction to apply to any Guarantor who is not in bankruptcy so that such Guarantor is not permitted to perform its obligations under this Guaranty and/or District may not immediately enforce the terms of this Guaranty or exercise such other rights and remedies against such Guarantor as would otherwise be provided by law, District shall immediately be entitled, and each Guarantor hereby consents, to relief from such stay, and each Guarantor hereby authorizes and directs District to present this Guaranty to the applicable court to evidence such agreement and consent.

8. Waivers.

8.1 To the fullest extent each Guarantor may do so under Laws, each Guarantor expressly waives notice of acceptance of this Guaranty or the right to enforce any of the terms of the Construction and Use Covenant, or any liability under this Guaranty. Except as provided in Section 9.1, to the extent permitted by Laws, District shall not be required to give any notice to any Guarantor hereunder in order to preserve or enforce District's rights hereunder (including, without limitation, notice of any default under or amendment to the Construction and Use Covenant or other documents evidencing and securing the obligations of Developer thereunder), any such notice being expressly waived by each Guarantor. In addition, if and to the extent permitted by Laws, each Guarantor agrees that District shall have no duty to disclose to any Guarantor any information it receives or have reasonably available to it regarding the financial status of the Developer, or any contractor, subcontractor or materialmen involved in the construction of the Project, or any information relating to the Project, whether or not such information indicates that the risk that any Guarantor may be required to perform hereunder has been or may be increased. Each Guarantor assumes full responsibility for being and keeping informed of all such matters.

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

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

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

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

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

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

9. Guaranty Event of Default; Remedies.

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

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

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

(c) the death, dissolution or incompetency of any Guarantor, and the failure of a replacement of this Guaranty to be delivered to District within sixty (60) days after such death, dissolution or incompetency;

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

(e) the determination by District in good faith that a material adverse change in Guarantor's financial condition has occurred, including, without limitation, the entry of a significant judgment against Guarantor, or the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor;

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

(g) the occurrence of any Insolvency Event (as defined below) with respect to each Guarantor. The term "**Insolvency Event**" shall mean any of the following: in the event that by order of a court of competent jurisdiction, a receiver or liquidator or trustee of any Guarantor or any of its property shall be appointed and shall not have been discharged within ninety (90) days, or, if by decree of such a court, such Guarantor shall be adjudicated bankrupt or insolvent or any of such Guarantor's property shall have been sequestered, and such decree shall remain undischarged and unstayed for ninety (90) days after the entry thereof, or if a petition to reorganize any Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to such Guarantor, as now or hereafter in effect, shall be filed against such Guarantor and shall not be dismissed within ninety (90) days after such filing, or if any Guarantor shall file a petition in voluntary bankruptcy under any provision of any bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under such law, or if (without limitation of the generality of the

foregoing) any Guarantor shall file a petition for an arrangement or to reorganize such Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to such Guarantor, as now or hereafter in effect, or shall make an assignment for the benefit of its creditors, or shall admit in writing such Guarantor's inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of such Guarantor or of all or any part of such Guarantor's property.

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

10. **Indemnification.** Each Guarantor agrees, to indemnify and hold harmless District for all reasonable, direct, out-of-pocket costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, and costs of collection incurred or paid by District arising out of or in connection with (a) the Guaranteed Obligations, and (b) the enforcement of this Guaranty by District. Notwithstanding the foregoing, no Guarantor shall have any obligation to indemnify District for any costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, if such Guarantor should prevail in an enforcement action; provided, further, the immediately preceding proviso clause shall not be deemed to release any Guarantor from its indemnification obligations under this Guaranty if District prevails against such Guarantor in any enforcement action notwithstanding the fact that District may not have prevailed against another Guarantor or in a previous enforcement action.

11. **No Limitation of Obligations.** To the fullest extent each Guarantor may do so under Laws, each Guarantor agrees that it shall make no claim or setoff, defense, recoupment or counterclaim of any sort whatsoever, nor shall such Guarantor seek to impair, limit or defeat in any way its obligations hereunder. To the fullest extent each Guarantor may do so under Laws, each Guarantor hereby waives any right to such a claim in limitation of its obligations hereunder.

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

irrespective of the respective dates of the incurrence, accrual or maturity thereof, to the indebtedness and obligations of Developer to District under the Construction and Use Covenant.

13. **No Assignment or Delegation; Merger.** No Guarantor may or shall assign or delegate its obligations under this Guaranty except as set forth in Section 9.1(c) or Section 9.1(e) above. If any Guarantor is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as a Guarantor under this Guaranty to the same extent as the original named Guarantor hereunder.

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

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

16. **Notices.** Any notice, demand, statement or request required under this Guaranty shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, at the following respective addresses:

IF TO DISTRICT:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
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. 20001
Attention: Deputy Attorney General, Commercial Division

IF TO GUARANTORS:

With a copy to (which shall not constitute notice):

Notices served upon District or any Guarantor in the manner aforesaid shall be deemed to have been received for all purposes under this Guaranty as follows: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next business day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Guaranty and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Guaranty. If, after a default under this Guaranty which remains uncured beyond the applicable notice and cure period(s), if any, afforded to any Guarantor under this Guaranty, District is unable to serve a Guarantor at the above respective addresses despite District using commercially reasonable efforts to obtain a new notice address for such Guarantor, notwithstanding the foregoing provisions, each Guarantor irrevocably consents and agrees that, until such default shall have been cured by any Guarantor, the service of any and all legal process, summons, notices and documents which may be served in any such action, suit or proceeding against any Guarantor arising under this Guaranty may be made by mailing a copy thereof by certified mail, postage prepaid, return receipt requested, with delivery restricted to such Guarantor's registered agent currently on file with the District of Columbia's Department of Consumer and Regulatory Affairs, with such service to be effective upon receipt.

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

18. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY: (I) COVENANTS AND AGREES NOT TO ELECT TRIAL BY JURY OF ANY ISSUE HEREUNDER TRIABLE OF RIGHT BY A JURY; AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY EACH GUARANTOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY TO PROVIDE OR ACCEPT THIS GUARANTY, AS APPLICABLE. FOR THE PURPOSES OF THIS SECTION 18, THE TERM "PARTY" IS DEEMED TO MEAN DISTRICT, AS WELL AS EACH OF THE GUARANTORS.

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

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO
DEVELOPMENT AND COMPLETION GUARANTY

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

GUARANTORS:
[INSERT SIGNATURE BLOCKS]

COUNCIL DRAFT

Exhibit N-2
Form of Development and Completion Guaranty for the Affordable Housing Project

Exhibit N-2

FORM OF DEVELOPMENT AND COMPLETION GUARANTY [AFFORDABLE HOUSING PROJECT]

THIS DEVELOPMENT AND COMPLETION GUARANTY (“**Guaranty**”) is made as of [____], 20__, by [____], a [____] and [____], a [____] (each, a “**Guarantor**” and collectively, the “**Guarantors**”), 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 (“**District**”). [If a single Guarantor, references to Guarantor and other appropriate provisions shall be modified to reflect the single Guarantor.]

RECITALS:

WHEREAS: District and TPC 5th & I Partners, LLC, a District of Columbia limited liability company (“**Hotel Developer**”), together with MLK DC AH Developer, a Delaware limited liability company (“**Developer**”), an affiliate of Hotel Developer, have entered into a certain Land Disposition and Development Agreement, dated as of [____], 20__ (the “**Development Agreement**”), pursuant to which, among other things, Developer has agreed to develop the Project on the Property.

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

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

1. Recitals; Definitions.

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

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

2. Representations and Warranties.

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

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

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

(c) such Guarantor (if such Guarantor is not a natural Person) 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) such 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 such Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law);

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

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

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

(i) neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of such Guarantor contains any untrue statement

of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

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

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

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

(m) such Guarantor is not a Prohibited Person; and

(m) all financial statements delivered to District at any time by or on behalf of such 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 (if any such Guarantor is not a natural Person) (or other accounting principles as District may agree to in its sole and absolute discretion) consistently applied, and there has been no Material Adverse Change in the financial position of such Guarantor since the respective dates of (or periods covered by) such statements, and without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually by Guarantor and not jointly with any spouse or other Person.

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

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

3. Guaranty.

3.1 Each Guarantor hereby absolutely and unconditionally, and jointly and severally, guarantees to District and its successors and assigns: (i) the commencement and completion of

the construction of the Project through Final Completion pursuant to the terms and conditions of the Affordable Housing Covenant and the Construction and Use Covenant (including, without limitation, in accordance with the Approved Construction Drawings), and within the time period allotted therefor in the Schedule of Performance attached as an Exhibit to the Construction and Use Covenant, as said Approved Construction Drawings and Schedule of Performance may be revised and/or modified from time to time in accordance with the Construction and Use Covenant, it being expressly understood and agreed that Guarantor guarantees that the date of Final Completion of the Project shall in no event be later than that date which is six months subsequent to the date that a Certificate of Occupancy is issued the District of Columbia government for the opening and operation of the hotel to be constructed by the Hotel Developer pursuant to the Development Agreement; (ii) that Developer shall keep the Property and the Project free and clear of all liens (other than liens in favor of an Approved Mortgagee), claims of lien and other claims connected with or arising out of the construction or completion of the Project; and (iii) pay in full all amounts due to any contractor, subcontractor, materialman, laborer, any employee or other Person who is engaged at any time in work or supplying materials in connection with the construction of the Project (collectively, the “**Guaranteed Obligations**”).

3.2 In the event of any default by Developer under the Construction and Use Covenant that continues beyond the expiration of any applicable notice and/or cure period, each Guarantor agrees, upon request by District, at such Guarantor’s option either: (a) to assume [joint and several] responsibility for the performance of the Guaranteed Obligations, prior to the date of Final Completion for the Project specified in the Construction and Use Covenant, and to pay all costs and expenses in connection therewith, at Guarantor’s own cost and expense; or (b) to cure any default by Developer (to the extent such default arises from a failure by Developer to perform the Guaranteed Obligations), to the extent curable. Without limiting the generality of the foregoing, each Guarantor agrees that if any mechanic’s or materialmen’s liens should be filed, or should attach, with respect to the Property by reason of the construction of the Project, within the shorter of thirty (30) days and any time period(s) specified by any Approved Mortgagee after any Guarantor is advised of the filing of such liens, such Guarantor shall cause the removal or waiver of such liens, or the posting of security against the consequences of their possible foreclosure. So long as any Guarantor timely complies with the immediately preceding sentence, each Guarantor shall have the right to contest in good faith any claim, lien or encumbrance, provided that such Guarantor does so diligently and without prejudice to District or delay in the Final Completion of the Project.

4. **Reports.**

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

accompanied by a certification of such Guarantor to District (made by the chief financial officer in the case of any corporate Guarantor) that such report (i) has been prepared in accordance with generally accepted accounting principles (or other accounting principles as District may agree to in its sole and absolute discretion) consistently applied, (ii) presents fairly the financial condition of such Guarantor as of the respective dates thereof, and (iii) shows all direct and contingent material liabilities of such Guarantor as of such dates.

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

4.3 From time to time promptly after District's request, but no more frequently than quarterly, except during the existence of an uncured Guaranty Event of Default Guarantor shall deliver to District such additional information, reports and statements regarding the business operations and financial condition of such Guarantor as District may reasonably request.

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

6. **No Release or Waiver.**

6.1 No action which Developer or District may take or omit to take in connection with the Project, nor any course of dealing with Developer or any other Person, shall release any Guarantor's obligations hereunder or affect this Guaranty in any way. By way of example, but

not in limitation of the foregoing, each Guarantor hereby expressly agrees that District may, from time to time, and without notice to such Guarantor, but with the written prior agreement of Developer:

- (a) amend, change or modify, in whole or in part, the Construction and Use Covenant;
- (b) waive any terms, conditions or covenants of the Construction and Use Covenant, or grant any extension of time or forbearance for performance of the same;
- (c) compromise or settle any amount due or owing, or claimed to be due or owing, under the Construction and Use Covenant;
- (d) surrender, release or subordinate any or all security for the Construction and Use Covenant, or accept additional or substituted security therefor; and
- (e) release, substitute or add guarantors of the Construction and Use Covenant.

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

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

7. **Relief from Automatic Stay.** If: (i) a default by Developer has occurred under Section 6.1(b) of the Construction and Use Covenant; and (ii) the automatic stay imposed by the applicable provisions of the Bankruptcy Code, as amended, or under any other applicable law, against the exercise of the rights and remedies otherwise available to creditors of the Developer is deemed by the court having jurisdiction to apply to any Guarantor who is not in bankruptcy so that such Guarantor is not permitted to perform its obligations under this Guaranty and/or District may not immediately enforce the terms of this Guaranty or exercise such other rights and remedies against such Guarantor as would otherwise be provided by law, District shall immediately be entitled, and each Guarantor hereby consents, to relief from such stay, and each

Guarantor hereby authorizes and directs District to present this Guaranty to the applicable court to evidence such agreement and consent.

8. Waivers.

8.1 To the fullest extent each Guarantor may do so under Laws, each Guarantor expressly waives notice of acceptance of this Guaranty or the right to enforce any of the terms of the Construction and Use Covenant, or any liability under this Guaranty. Except as provided in Section 9.1, to the extent permitted by Laws, District shall not be required to give any notice to any Guarantor hereunder in order to preserve or enforce District's rights hereunder (including, without limitation, notice of any default under or amendment to the Construction and Use Covenant or other documents evidencing and securing the obligations of Developer thereunder), any such notice being expressly waived by each Guarantor. In addition, if and to the extent permitted by Laws, each Guarantor agrees that District shall have no duty to disclose to any Guarantor any information it receives or have reasonably available to it regarding the financial status of the Developer, or any contractor, subcontractor or materialmen involved in the construction of the Project, or any information relating to the Project, whether or not such information indicates that the risk that any Guarantor may be required to perform hereunder has been or may be increased. Each Guarantor assumes full responsibility for being and keeping informed of all such matters.

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

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

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

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

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

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

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

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

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

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

(c) the death, dissolution or incompetency of any Guarantor, and the failure of a replacement of this Guaranty to be delivered to District within sixty (60) days after such death, dissolution or incompetency;

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

(e) the determination by District in good faith that a material adverse change in Guarantor’s financial condition has occurred, including, without limitation, the entry of a significant judgment against Guarantor, or the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor;

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

(g) the occurrence of any Insolvency Event (as defined below) with respect to each Guarantor. The term “**Insolvency Event**” shall mean any of the following: in the event that by order of a court of competent jurisdiction, a receiver or liquidator or trustee of any Guarantor or any of its property shall be appointed and shall not have been discharged within ninety (90) days, or, if by decree of such a court, such Guarantor shall be adjudicated bankrupt or insolvent or any of such Guarantor’s property shall have been sequestered, and such decree shall remain undischarged and unstayed for ninety (90) days after the entry thereof, or if a petition to

reorganize any Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to such Guarantor, as now or hereafter in effect, shall be filed against such Guarantor and shall not be dismissed within ninety (90) days after such filing, or if any Guarantor shall file a petition in voluntary bankruptcy under any provision of any bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under such law, or if (without limitation of the generality of the foregoing) any Guarantor shall file a petition for an arrangement or to reorganize such Guarantor pursuant to any federal, state, District, or local bankruptcy, insolvency or similar type laws, or any other similar statute applicable to such Guarantor, as now or hereafter in effect, or shall make an assignment for the benefit of its creditors, or shall admit in writing such Guarantor's inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of such Guarantor or of all or any part of such Guarantor's property.

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

10. **Indemnification.** Each Guarantor agrees, to indemnify and hold harmless District for all reasonable, direct, out-of-pocket costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, and costs of collection incurred or paid by District arising out of or in connection with (a) the Guaranteed Obligations, and (b) the enforcement of this Guaranty by District. Notwithstanding the foregoing, no Guarantor shall have any obligation to indemnify District for any costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, if such Guarantor should prevail in an enforcement action; provided, further, the immediately preceding proviso clause shall not be deemed to release any Guarantor from its indemnification obligations under this Guaranty if District prevails against such Guarantor in any enforcement action notwithstanding the fact that District may not have prevailed against another Guarantor or in a previous enforcement action.

11. **No Limitation of Obligations.** To the fullest extent each Guarantor may do so under Laws, each Guarantor agrees that it shall make no claim or setoff, defense, recoupment or counterclaim of any sort whatsoever, nor shall such Guarantor seek to impair, limit or defeat in any way its obligations hereunder. To the fullest extent each Guarantor may do so under Laws, each Guarantor hereby waives any right to such a claim in limitation of its obligations hereunder.

12. **No Right of Subrogation.** Until all of the Guaranteed Obligations are fully paid, performed and/or fulfilled, each Guarantor agrees solely with respect to itself that it: (i) shall

have no right of subrogation against Developer by reason of any payments or acts of performance by such Guarantor in compliance with the obligations of such Guarantor under this Guaranty; (ii) waives any right to enforce any remedy which such Guarantor now or hereafter shall have against Developer by reason of any payment or act of performance in compliance with the obligations of such Guarantor hereunder; and (iii) subordinates any present or future, liquidated or unliquidated, liability, indebtedness or obligations of Developer to such Guarantor, irrespective of the respective dates of the incurrence, accrual or maturity thereof, to the indebtedness and obligations of Developer to District under the Construction and Use Covenant.

13. **No Assignment or Delegation; Merger.** No Guarantor may or shall assign or delegate its obligations under this Guaranty except as set forth in Section 9.1(c) or Section 9.1(e) above. If any Guarantor is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as a Guarantor under this Guaranty to the same extent as the original named Guarantor hereunder.

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

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

16. **Notices.** Any notice, demand, statement or request required under this Guaranty shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, at the following respective addresses:

IF TO DISTRICT:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
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. 20001
Attention: Deputy Attorney General, Commercial Division

IF TO GUARANTORS:

With a copy to (which shall not constitute notice):

Notices served upon District or any Guarantor in the manner aforesaid shall be deemed to have been received for all purposes under this Guaranty as follows: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next business day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Guaranty and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Guaranty. If, after a default under this Guaranty which remains uncured beyond the applicable notice and cure period(s), if any, afforded to any Guarantor under this Guaranty, District is unable to serve a Guarantor at the above respective addresses despite District using commercially reasonable efforts to obtain a new notice address for such Guarantor, notwithstanding the foregoing provisions, each Guarantor irrevocably consents and agrees that, until such default shall have been cured by any Guarantor, the service of any and all legal process, summons, notices and documents which may be served in any such action, suit or proceeding against any Guarantor arising under this Guaranty may be made by mailing a copy thereof by certified mail, postage prepaid, return receipt requested, with delivery restricted to such Guarantor's registered agent currently on file with the District of Columbia's Department of Consumer and Regulatory Affairs, with such service to be effective upon receipt.

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

18. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY: (I) COVENANTS AND AGREES NOT TO ELECT TRIAL BY JURY OF ANY ISSUE HEREUNDER TRIABLE OF RIGHT BY A JURY; AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY EACH GUARANTOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY TO PROVIDE OR ACCEPT THIS GUARANTY, AS APPLICABLE. FOR THE PURPOSES OF THIS SECTION 18, THE TERM "PARTY" IS DEEMED TO MEAN DISTRICT, AS WELL AS EACH OF THE GUARANTORS.

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

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO
DEVELOPMENT AND COMPLETION GUARANTY

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

GUARANTORS:
[INSERT SIGNATURE BLOCKS]

COUNCIL DRAFT

Exhibit O
Form of Deposit Letter of Credit

Office of Attorney General for the District of Columbia Form Letter of Credit

ISSUER: _____ Date of Issue: _____, 20____
[Name of Bank]
[Bank Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [Insert Number]

Beneficiary

Applicant

District of Columbia, by and through
The Office of Deputy Mayor for
Planning and Economic Development
1350 Pennsylvania Avenue, NW. Ste 317
Washington D.C. 20007
Attention: Deputy Mayor for Planning
and Economic Development

[Name of Developer]
[Address]

AMOUNT: \$ _____

EXPIRY DATE: [Insert Date] subject to renewal provisions herein

Ladies and Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit [Insert Number] ("Letter of Credit") in favor of Beneficiary for the account of Applicant up to an aggregate amount of _____ U.S DOLLARS (U.S. \$ _____) Available for payment when accompanied by the following three items:

1. A draft at sight drawn on [Name of Bank] duly endorsed on its reverse thereof by a duly authorized representative of the Beneficiary, specifically referencing this Letter of Credit Number [Insert Number];
2. The original of this Letter of Credit; and
3. A dated statement issued on the letterhead of Beneficiary, stating: "The amount of this drawing is \$ _____, drawn under Irrevocable Standby Letter of Credit No. [Insert Number] and represents funds due and owing to the District of Columbia." Such statement shall be conclusive as to such matters and Issuer will accept such statement as binding and correct. Issuer shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying agreement between Applicant and Beneficiary before performing under the terms of this Letter of Credit.

Continues on the next Page

This Letter of Credit shall automatically renew for one year term upon the Anniversary of the expiry date set forth above (The "Anniversary Date") until [insert date] unless (i) earlier released by Beneficiary in writing or (ii) Issuers delivers written notice to both Applicant and Beneficiary that this Letter of Credit will not be renewed on the Anniversary Date upon which this Letter of Credit will no longer be renewed. Notwithstanding any terms and/or conditions to the contrary, this Letter of Credit will expire no later than [Insert Date].

If a drawing made by Beneficiary under this Letter of Credit reaches the address provided on this Standby Letter of Credit via Courier (FEDEX or DHL) on or prior to 1:00 PM (Eastern Time) on a Business Day (Defined below) and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds, on the same Business Day. If a drawing is made by Beneficiary under this Letter of Credit after 1:00 pm (Eastern Time) on a Business Day and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds on the next Business Day. If requested by Beneficiary, payment under this Letter of Credit may be deposit of immediately available funds into an account designated by Beneficiary. As used herein, the term "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institution in the District of Columbia are authorized or required by law to close.

Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented by the Mayor, City Administrator, Deputy Mayor for Planning and Economic Development, or one of their duly authorized representatives, on or before the Expiry Date to Issuer's office at the address of Issuer set forth above.

This undertaking is issued subject to the International Standby Practices 1998 ("ISP98"). As to matters not expressly governed by ISP98, this Letter of Credit is governed by and shall be construed in accordance with the laws of the District of Columbia.

This Letter of Credit set forth in full terms of our undertaking. This undertaking shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or other agreement, without the express written authorization of Issuer, Beneficiary and Applicant.

Continues on the next Page

[Insert Letter of Credit Number]

Page 3

Should you have occasion to communicate with us regarding the Letter of Credit, kindly direct your communication to the attention of Letters of Credit Dept. to the address aforementioned stating as reference our Standby Letter of Credit Number [Insert Letter of Credit Number].

Truly Yours,

Authorized Signature

Authorized Signature

Source	Entity/Source	Amount
Developer Equity by Entity	The Pebbles Corporation	\$5,407,780
Developer Equity by Entity		
Developer Equity by Entity		
CBE Developer Equity by Entity	The Walker Group, LLC	\$1,351,945
Third Party Equity	MacFarlane Partners	\$27,038,898
Third Party Equity		
Deferred Developer Fees		
Total Equity		\$33,798,622
Debt Source	Deutsche Bank/Eagle Bank	101,395,867
Debt Source		
Debt Source		
Debt Source		
Total Debt		\$101,395,867
Total Sources		\$135,194,489

Line Item	Total Uses		
	Amount	Amount/GSF	Amount/Unit U
Acquisition/DD Costs	\$406,000	\$1.63	\$1,580
Land Purchase Price to the District	\$28,000,000	\$112.13	\$108,949
Project Hard Costs	\$50,177,633	\$200.95	\$195,244
Total Project Soft Costs (excluding Financing & Development Fee)	\$30,015,915	\$120.21	\$116,793
Total Financing Costs	\$13,688,442	\$54.82	\$53,262
Developer Fee	\$6,083,752	\$24.36	\$23,672
Contingency	\$6,822,747	\$27.32	\$26,548
Total Uses	\$135,194,489	\$541.43	\$526,049

Note:

[1]: Hotel and Residential Units Combined: 198+59 = 257

The Community Benefits Agreement (if applicable)
[to be negotiated]

**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 **MLK DC AH DEVELOPER, LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (the “Developer”).

RECITALS

A. Pursuant to a Land Disposition and Development Agreement to be entered into 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 an affordable housing project located at 2100 Martin Luther King Avenue, SE, Washington, DC (the “Project”).

B. Pursuant to the Land Disposition and Development 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 and Development 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 Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the “Act”) (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a “CBE”) 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.¹ Developer shall expend funds contracting and procuring goods and services from CBEs 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”). Developer shall make all reasonable efforts to ensure that qualified Small Business Enterprises (“SBE”) certified by DSLBD are significant participants in the overall subcontract work. The Adjusted Development Budget is **\$16,600,000**. The CBE Minimum Expenditure is therefore **\$5,029,500**.

¹ Developer may also hire and contract with CBEs certified pursuant to the Act’s successor, the Small and Certified Business Enterprise Development and Assistance Act of 2014 (D.C. Law 20-108).

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 Identification of CBEs and 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.

(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.**

CBE AGREEMENT – 5th & I Affordable Housing Project

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

Section 3.2 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.

MLK DC AH Developer, LLC
c/o The Peebles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 33134
Attn: Lowell Plotkin, General Counsel

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
GENERAL CONTRACTORS/, CONSTRUCTION MANAGERS AND CONTRACT
MANAGERS**

Section 4.1 Adherence to CBE Minimum Expenditure. For each component of the Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for the development project, as applicable, (the “General Contractor”), that the General Contractor comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and General Contractor (“GC”) have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall

CBE AGREEMENT –5th & I Affordable Housing Project

work with the GC to assure that the GC will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the GC and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the GC that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the GC respectively. Specifically, Developer will require in its contractual agreement with its GC, or if the Developer and GC have already entered a contractual agreement prior to the execution of this Agreement work with its GC, to achieve the following actions in any employment or contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

- (i) The GC when soliciting bids for products or services for this Project, the 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 GC will make full use of DSLBD's website, found at <http://dslbd.dc.gov>, for listing opportunities and for subcontracting compliance monitoring.
- (iii) The 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 GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.
- (v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.
- (vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.
- (vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer's payment to the GC.
- (viii) The 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 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 Act, 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 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:

CBE AGREEMENT – 5th & I Affordable Housing Project

- (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 change in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and
- (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 **\$1,257,375**.

- (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 **\$1,257,375**.
- (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.*, **\$251,475**.
- (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 things:
 - 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;

CBE AGREEMENT – 5th & I Affordable Housing Project

- 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 example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, **\$62,869**.

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 and Development 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

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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
202-727-3600

To Developer: MLK DC AH Developer, LLC
c/o The Peebles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 33134
Attention: Lowell Plotkin, General counsel
Tel: 305-993-5050
Fax 786-360-1764

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

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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):

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

*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

CBE AGREEMENT – 5th & I Affordable Housing Project

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

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

AGREED TO AND EXECUTED THIS __12th__ DAY OF _November_ 2014

**DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS
DEVELOPMENT**

By: Robert M. Summers
Robert Summers
Director

DEVELOPER, MLK DC AH Developer, LLC

By: _____
Lowell Plotkin
Authorized Signatory

CBE AGREEMENT – 5th & I Affordable Housing Project

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 _____ 2014

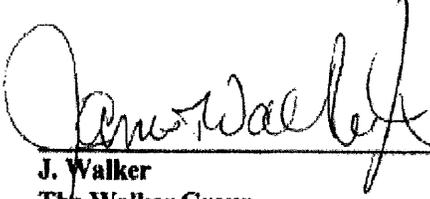
DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Director

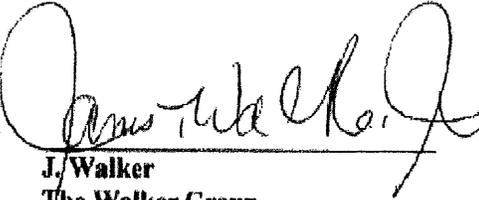
DEVELOPER, MLK DC AH Developer, LLC

By:  _____
Lowell Plotkin
Authorized Signatory

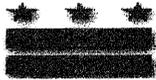
**ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE
DEVELOPMENT PARTICIPANT(S):**

By: 
J. Walker
The Walker Group
20 % of Development Participation in the Project
LSR74142072015

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

By: 
J. Walker
The Walker Group
20% of Equity Participation in the Project
LSR74142072015

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



MLK DC AH Developer, LLC
745 Fifth Avenue, New York, NY 10151
Part of SQUARE 5782, Lot 1025
WASHINGTON, D.C.

Attachment 1

11/7/2014

PROJECT OVERVIEW

Project Name: Disposition of 901 5th Street, NW - Affordable Housing Development
Project Owner/Sponsor: District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED")
Developer & Managing Member: John A. Wilson Building, 1350 Pennsylvania Avenue, NW
MLK DC AH Developer, LLC
Local Ownership Partners: The Walker Group or an affiliate thereof
1209 Crittenden Street, NW
Lead Architect: TBD
Civil Engineer: TBD
Landscape Architect: TBD
Traffic Planner: TBD
Zoning Counsel: TBD
Advisory Neighborhood Commission (ANC): ANC
Project Location: Project is located on part of 2100 MLK Avenue, SE

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

First Trust Proceeds	\$	5,300,000
District Subsidy	\$	4,100,000
Low-Income Housing Tax Credit Equity	\$	6,700,000
DCHA Equity	\$	-
Hope VI Subsidy	\$	-
HPAP Subsidy	\$	-
Deferred Developer Fee	\$	500,000
Total Sources of Funds:	\$	16,600,000

USES OF FUNDS - SUMMARY

Total Budget	\$	16,600,000	100.00%
Exclusions	\$	2,230,000	13.43%
Adjusted Budget	\$	14,370,000	86.57%

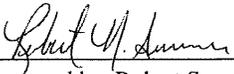
CBE Minimum Expenditure \$ 5,029,500

35.00% of the adjusted budget.

USES OF FUNDS	
Total Budget	\$ 16,600,000
Allowed Exclusions	Total Costs
Acquisition Cost	\$ 100,000
Recordation Tax	\$ -
Financing	
DHCD Tax Credit Application Fee	\$ -
DHCD Title Cost	\$ -
DHCD Recordation	\$ -
DCHFAs Application Fee	\$ -
DCHFAs Construction Monitoring Fee	\$ 100,000
DCHFAs Financing Fee	\$ 100,000
DCHFAs Tax Credit Allocation Fee	\$ -
DCHFAs 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	\$ 600,000
Lender Due Diligence	\$ 10,000
Lender Legal	\$ 90,000
Lender Construction Servicing Fee	\$ 20,000
Loan Fee	\$ 90,000
Title & Recording - Construction Loan	\$ -
Mortgage Recordation Tax (Net of Acquisition)	\$ -
Letter of Credit	\$ -
Letter of Credit on Good Faith Deposit	\$ -
Title & Recording - Permanent Loan	\$ 90,000
Prepaid Tax & Insurance Escrows	\$ -
Operating Reserve	\$ 90,000
Good Faith Deposit	
Permits	\$ -

Soft Cost/Financing Contingency	\$	160,000
Construction Contingency	\$	780,000
Development Contingency	\$	-
Total Exclusions	\$	2,230,000
<hr/>		
Adjusted Budget	\$	14,370,000

Total Project Budget	\$	16,600,000
Total Exclusions	\$	2,230,000
Adjusted Budget	\$	14,370,000
CBE Minimum Expenditure	\$	5,029,500
<hr/>		
Contingent Contribution - 25% of CBE Minimum	\$	1,257,375
Section 5.1(i) contribution example	\$	1,257,375
Section 5.1(ii) contribution example	\$	251,475
Section 5.1(iv) contribution example	\$	62,869



Date: _____

Approved by: Robert Summers, 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)

My 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.

**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 **TPC 5th & I Partners, LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (the “Developer”).

RECITALS

A. Pursuant to a Land Disposition and Development Agreement to be entered into 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 hotel and residential condominium project located at 901 5th street NW, Washington, DC (the “Project”).

B. Pursuant to the Land Disposition and Development 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 and Development 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 Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the “Act”) (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a “CBE”) 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.¹ Developer shall expend funds contracting and procuring goods and services from CBEs 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 I (the “CBE Minimum Expenditure”). Developer shall make all reasonable efforts to ensure that qualified Small Business Enterprises (“SBE”) certified by DSLBD are significant participants in the overall subcontract work. The Adjusted Development Budget is **\$135,200,000**. The CBE Minimum Expenditure is therefore **\$ 29,037,400**.

¹ Developer may also hire and contract with CBEs certified pursuant to the Act’s successor, the Small and Certified Business Enterprise Development and Assistance Act of 2014 (D.C. Law 20-108).

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 Identification of CBEs and 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.

(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 Reports shall contain the caption “CBE MINIMUM EXPENDITURE ACHIEVED.” Additionally, the final Quarterly Report shall contain the caption “FINAL QUARTERLY REPORT” and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

Section 3.2 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.

TPC 5th & I Partners, LLC
c/o The Peebles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 33134
Attn: Lowell Plotkin, General Counsel

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
GENERAL CONTRACTORS/, CONSTRUCTION MANAGERS AND CONTRACT
MANAGERS**

Section 4.1 Adherence to CBE Minimum Expenditure. For each component of the Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for the development project, as applicable, (the “General Contractor”), that the General Contractor comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum

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Expenditure. In the event that the Developer and General Contractor (“GC”) have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the GC to assure that the GC will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the GC and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the GC that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the GC respectively. Specifically, Developer will require in its contractual agreement with its GC, or if the Developer and GC have already entered a contractual agreement prior to the execution of this Agreement work with its GC, to achieve the following actions in any employment or contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

- (i) The GC when soliciting bids for products or services for this Project, the 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 GC will make full use of DSLBD’s website, found at <http://dslbd.dc.gov>, for listing opportunities and for subcontracting compliance monitoring.
- (iii) The 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 GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.
- (v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.
- (vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.
- (vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC’s receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer’s payment to the GC.
- (viii) The 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 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 Act, 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 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

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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 change in the Equity Participation and Development Participation and no dilution of the participants’ Equity Participation and Development Participation without the express written consent of the Director; and
- (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 **\$7,259,350**.

- (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 **\$7,259,350**.
- (ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, **\$1,451,870**.
- (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 things:
 - 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;

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- 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 example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, **\$362,968**.

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 and Development 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

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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
202-727-3600

To Developer: TPC 5th & I Partners, LLC
c/o The Pebbles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 33134
Attention: Lowell Plotkin, General Counsel
Tel: 305-993-5050
Fax 786-360-1764

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 OR 3 FOR THIS PROJECT):

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

*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

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

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

AGREED TO AND EXECUTED THIS __12th__ DAY OF __November__ 2014

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: Robert M. Summers
Robert Summers
Director

DEVELOPER, TPC 5th & I Partners, LLC

By: _____
Lowell Plotkin
Authorized Signatory

CBE AGREEMENT – 5th & I Hotel Condo Project

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 _____ 2014

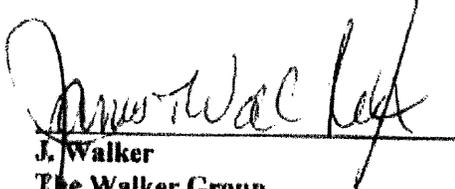
DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Director

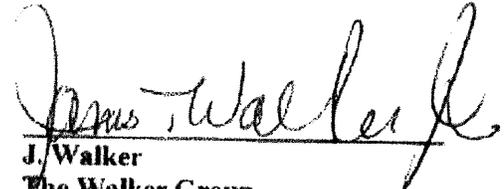
DEVELOPER, TPC 5th & I Partners, LLC

By: 
Lowell Plotkin
Authorized Signatory

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

By: 
J. Walker
The Walker Group
20% of Development Participation in the Project
LSR74142072015

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

By: 
J. Walker
The Walker Group
20% of Equity Participation in the Project
LSR74142072015

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



TPC 5th & I Partners, LLC
745 Fifth Avenue, New York, NY 10151
SQUARE 0516, Lot 0059
WASHINGTON, D.C.

Attachment 1

11/7/2014

PROJECT OVERVIEW

Project Name:	Disposition of 901 5th Street, NW - Hotel & Condo Development
Project Owner/Sponsor:	District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED")
Developer & Managing Member:	John A. Wilson Building, 1350 Pennsylvania Avenue, NW
Local Ownership Partners:	TPC 5th & I Partners LLC
	The Walker Group, LLC or an affiliate thereof
	1209 Crittenden Street, NW
Lead Architect:	TBD
Civil Engineer:	TBD
Landscape Architect:	TBD
Traffic Planner:	TBD
Zoning Counsel:	TBD
Advisory Neighborhood Commission (ANC):	ANC 6E05
Project Location:	Project is located at 901 Fifth Street. NW

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

	Permanent Loan	\$	101,400,000
	Equity	\$	33,800,000
	Low-Income Housing Tax Credit Equity	\$	-
	DCHA Equity	\$	-
	Hope VI Subsidy	\$	-
	HPAP Subsidy	\$	-
	Reinvested Sales Revenue	\$	-
Total Sources of Funds:		\$	135,200,000

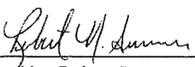
USES OF FUNDS - SUMMARY

Total Budget	\$	135,200,000	100.00%
Exclusions	\$	52,236,000	38.64%
Adjusted Budget	\$	82,964,000	61.36%
CBE Minimum Expenditure	\$	29,037,400	35.00% of the adjusted budget.

USES OF FUNDS	
Total Budget	\$ 135,200,000
Allowed Exclusions	Total Costs
Acquisition Cost	\$ 28,000,000
Recordation/Transfer Tax	\$ 406,000
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	\$	12,700,000
Lender Due Diligence	\$	-
Lender Legal	\$	-
Lender Construction Servicing Fee	\$	-
Loan Fee	\$	1,000,000
Title & Recording - Construction Loan	\$	-
Mortgage Recordation Tax (Net of Acquisition)	\$	-
Letter of Credit	\$	-
Letter of Credit on Good Faith Deposit	\$	-
Title & Recording - Permanent Loan	\$	-
Prepaid Tax & Insurance Escrows	\$	-
Operating Reserve	\$	2,500,000
Good Faith Deposit		
Permits	\$	830,000
Soft Cost/Financing Contingency	\$	1,800,000
Construction Contingency	\$	5,000,000
Development Contingency	\$	-
Total Exclusions	\$	52,236,000
Adjusted Budget	\$	82,964,000

Total Project Budget	\$	135,200,000
Total Exclusions	\$	52,236,000
Adjusted Budget	\$	82,964,000
CBE Minimum Expenditure	\$	29,037,400
Contingent Contribution - 25% of CBE Minimum	\$	7,259,350
Section 5.1(i) contribution example	\$	7,259,350
Section 5.1(ii) contribution example	\$	1,451,870
Section 5.1(iv) contribution example	\$	362,968


Date: _____
 Approved by: Robert Summers, 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)

My 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

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

November 14, 2014

Christopher Leng Smith
Managing Director of Development
The Peebles Corporation
745 Fifth Avenue
Suite 1610
New York, NY 10151

Dear Mr. Leng Smith:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and MLK DC AH Developer. 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: 2100 MLK. 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 cursive script, appearing to read "Drew Hubbard".

Drew Hubbard
Associate Director
First Source Program

Enclosure

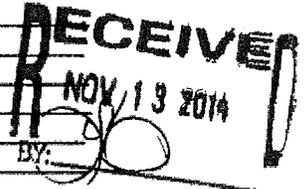


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRST SOURCE EMPLOYMENT AGREEMENT FOR
CONSTRUCTION PROJECTS ONLY**



GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

CONTRACT/SOLICITATION NUMBER: _____
 DISTRICT CONTRACTING AGENCY: Office of the Deputy Mayor for Planning and Economic Development ("DMPED")
 CONTRACTING OFFICER: Will Lee
 TELEPHONE NUMBER: 202-765-9869
 TOTAL CONTRACT AMOUNT: \$18,000,000
 EMPLOYER CONTRACT AMOUNT: \$18,000,000
 PROJECT NAME: 2100 MLK
 PROJECT ADDRESS: 2100 Martin Luther King Jr Avenue, SE
 CITY: Washington STATE: DC ZIP CODE: 20020
 PROJECT START DATE: TBD PROJECT END DATE: TBD
 EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD



EMPLOYER INFORMATION

EMPLOYER NAME: MLK DC AH Developer, LLC, a Delaware limited liability company
 EMPLOYER ADDRESS: 745 Fifth Avenue
 CITY: New York STATE: NY ZIP CODE: 10151
 TELEPHONE NUMBER: 212-355-1655 FEDERAL IDENTIFICATION NO.: 47-2265673
 CONTACT PERSON: Lowell Plotkin
 TITLE: General Counsel
 E-MAIL: lplotkin@peeblescorp.com TELEPHONE NUMBER: 305-993-5050
 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 new jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all new 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% 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 apprentice able occupation under the terms and conditions of approved apprenticeship standards.

B. **Beneficiary** means:

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

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

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

District vocational rehabilitation program;

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

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

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

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

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

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

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

II. GENERAL TERMS

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

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

III. TRAINING

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

Training Agreement.

IV. RECRUITMENT

- A. The EMPLOYER will complete the attached Revised Employment Plan that will include the information outlined in Section I.N., above.
- B. The EMPLOYER will post all job vacancies with the Job Bank Services of DOES at <http://docs.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 new jobs created by the Project.

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 new 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 new 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 new 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.

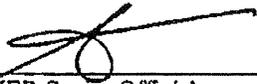
2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.
3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance 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

MLK DC AH Developer, LLC

Name of Company

745 Fifth Avenue, Suite 1601, NY, NY 10151

745 Fifth Avenue, Suite 1601, NY, NY 10151

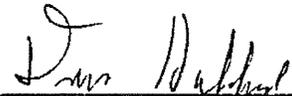
Address

212-355-1655

Telephone

lplotkin@peeblescorp.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

11/13/14
Date

EMPLOYMENT PLAN

NAME OF EMPLOYER: MLK DC AH Developer, LLC, a Delaware limited liability company
 ADDRESS OF EMPLOYER: 745 Fifth Avenue, New York, NY 10151
 TELEPHONE NUMBER: 212-355-1655 FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: Lowell Plotkin TITLE: General Counsel
 E-MAIL: lplotkin@peeblescorp.com TYPE OF BUSINESS: Real Estate Development

DISTRICT CONTRACTING AGENCY: Office of the Deputy Mayor for Planning and Economic Development ("DMPED")
 CONTRACTING OFFICER: Will Lee TELEPHONE NUMBER: 202-765-9869
 TYPE OF PROJECT: Affordable Housing Development CONTRACT AMOUNT: \$16,000,000
 EMPLOYER CONTRACT AMOUNT: \$16,000,000
 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		SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
	F/T	P/T			
A	See page 9				
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

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

A. Employment and Business Opportunities for Local Residents and Businesses

The development team has a deep appreciation of the importance of supporting our communities through providing access to economic opportunities. The redevelopment of 901 Fifth Street, NW with a hotel and residential condo development and the associated redevelopment of part of 2100 Martin Luther King Jr Avenue, SE with affordable housing is likely to have an immediate and positive catalytic effect on the social, economic and environmental health of the neighborhoods. We estimate the total development cost of the projects to be more than \$150 million, of which more than \$65 million will be spent on construction related expenses. Construction is expected to generate more than 370 jobs with ongoing activity at the sites and more than 320 permanent jobs. As both a developer and property owner, the development team is in a unique position to create short and long term job, apprenticeship and internship opportunities for DC residents at not only these projects but also at our other properties in the District of Columbia. For example, the Peebles Corporation already collaborates closely with the Hospitality High School to provide resources and training opportunities for DC students. We look forward to the opportunity to use the projects to further expand our support of the District's students and residents.

We plan to place a special focus upon advertising employment and apprenticeship opportunities directly to the neighbors. Through discussions with the District and area churches, we will assess ways in which we can maximize opportunities for local residents. Our initial efforts will include, but will not be limited to identifying short and long-term employment opportunities amongst the entire project team. This will be most effective in our community outreach process where we will hold local job fairs to ensure that we connect with the immediate and local ward residents. This environment will also facilitate opportunities for CBE (Certified Business Enterprise) firms to work with and/or partner with us to help build and grow these organizations in a meaningful way. These individuals and businesses are key to our ability to reference success on developments.

We also understand that DOES (DC Department of Employment Services) has created databases that house all of the certified individuals seeking employment and we plan to use them as well in our efforts to develop a healthy and robust process for our local residents. We believe in this process and know that it will make a lasting impact on the community.

Furthermore, we intend to utilize any commercial space to support local business development and employment. We will seek out local partners for our commercial spaces, and will encourage our commercial partners to advertise job openings to neighborhood residents and give preference to them when hiring.

B. Opportunities for District Neighborhood-Based Businesses

As a minority-owned company that got its own start with a DC public project, The Peebles Corporation knows firsthand the transformative power that a partnership can have for local and minority businesses. The development team pledges to create opportunities for District-based companies throughout all aspects of the projects. Our plan is to connect with the local ANC, churches and the DC-OLBD (DC Office of Local Business Development) to acquire an up to date database of not only District-Based organizations but CBE firms as well. We will use this information to seek out and meet with these firms to get an understanding of their business desires, pipeline, and project success so we can place them in the most successful opportunities for themselves and the projects.

The development team believes that successful projects require positive relationships with local community leaders. For these projects, leaders will include ANC Commissioners, the local Council member, and local resident leaders. We will rely heavily on these neighborhood leaders to identify credible, local enterprises with which we can partner.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

November 14, 2014

Christopher Leng Smith
Managing Director of Development
The Pebbles Corporation
745 Fifth Avenue
Suite 1610
New York, NY 10151

Dear Mr. Leng Smith:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and TPC 5th & I Partners, 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: 901 Fifth 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 that reads "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: Office of the Deputy Mayor for Planning and Economic Development
 CONTRACTING OFFICER: Will Lee
 TELEPHONE NUMBER: 202-765-9869
 TOTAL CONTRACT AMOUNT: \$28,000,000
 EMPLOYER CONTRACT AMOUNT: \$28,000,000
 PROJECT NAME: 901 Fifth Avenue, NW
 PROJECT ADDRESS: 901 Fifth Street, NW
 CITY: Washington STATE: DC ZIP CODE: 20001
 PROJECT START DATE: TBD PROJECT END DATE: TBD
 EMPLOYER START DATE: TBD EMPLOYER END DATE: TBD

RECEIVED
 NOV 12 2014
 BY: _____

EMPLOYER INFORMATION

EMPLOYER NAME: TPC Sith & I Partners, LLC
 EMPLOYER ADDRESS: 745 Fifth Avenue
 CITY: New York STATE: NY ZIP CODE: 10151
 TELEPHONE NUMBER: 212-355-1655 FEDERAL IDENTIFICATION NO.: 47-2219374
 CONTACT PERSON: Lowell Plotkin
 TITLE: General Counsel
 E-MAIL: lplotkin@pebblecorp.com TELEPHONE NUMBER: 305-983-5050
 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 new jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all new 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% 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 apprentice able occupation under the terms and conditions of approved apprenticeship standards.
- B. **Beneficiary** means:
 - 1. The signatory to a contract executed by the Mayor which involves any District of

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

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

District vocational rehabilitation program;

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

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

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

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

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

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

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

II. GENERAL TERMS

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

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

III. TRAINING

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

Training Agreement.

IV. RECRUITMENT

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

V. REFERRAL

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

VI. PLACEMENT

- A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.
- B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. The EMPLOYER will still be required to meet the hiring or hours worked percentages for all new jobs created by the Project.

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 new 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 new 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 new 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.

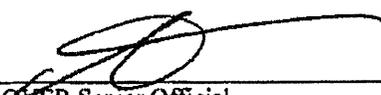
2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.
3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance 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

TPC 5th & I Partners, LLC

Name of Company

745 Fifth Avenue, Suite 1601, NY NY 10151

745 Fifth Avenue, Suite 1601, NY NY 10151

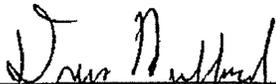
Address

212-355-1655

Telephone

lplotkin@peeblescorp.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

11/13/14

Date

EMPLOYMENT PLAN

NAME OF EMPLOYER: TPC 5th & I Partners, LLC
 ADDRESS OF EMPLOYER: 745 Fifth Avenue, New York, NY 10151
 TELEPHONE NUMBER: 212-355-1655 FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: Lowell Plotkin TITLE: General Counsel
 E-MAIL: lplotkin@peeblescorp.com TYPE OF BUSINESS: Real Estate Development

DISTRICT CONTRACTING AGENCY: Office of the Deputy Mayor for Planning and Economic Development ("DMPED")
 CONTRACTING OFFICER: Will Lee TELEPHONE NUMBER: 202-765-9869
 TYPE OF PROJECT: Hotel and condo development CONTRACT AMOUNT: \$28,000,000
 EMPLOYER CONTRACT AMOUNT: \$28,000,000
 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		SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
	F/T	P/T			
A See page 9					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

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

A. Employment and Business Opportunities for Local Residents and Businesses

The development team has a deep appreciation of the importance of supporting our communities through providing access to economic opportunities. The redevelopment of 901 Fifth Street, NW with a hotel and residential condo development and the associated redevelopment of part of 2100 Martin Luther King Jr Avenue, SE with affordable housing is likely to have an immediate and positive catalytic effect on the social, economic and environmental health of the neighborhoods. We estimate the total development cost of the projects to be more than \$150 million, of which more than \$65 million will be spent on construction related expenses. Construction is expected to generate more than 370 jobs with ongoing activity at the sites and more than 320 permanent jobs. As both a developer and property owner, the development team is in a unique position to create short and long term job, apprenticeship and internship opportunities for DC residents at not only these projects but also at our other properties in the District of Columbia. For example, the Peebles Corporation already collaborates closely with the Hospitality High School to provide resources and training opportunities for DC students. We look forward to the opportunity to use the projects to further expand our support of the District's students and residents.

We plan to place a special focus upon advertising employment and apprenticeship opportunities directly to the neighbors. Through discussions with the District and area churches, we will assess ways in which we can maximize opportunities for local residents. Our initial efforts will include, but will not be limited to identifying short and long-term employment opportunities amongst the entire project team. This will be most effective in our community outreach process where we will hold local job fairs to ensure that we connect with the immediate and local ward residents. This environment will also facilitate opportunities for CBE (Certified Business Enterprise) firms to work with and/or partner with us to help build and grow these organizations in a meaningful way. These individuals and businesses are key to our ability to reference success on developments.

We also understand that DOES (DC Department of Employment Services) has created databases that house all of the certified individuals seeking employment and we plan to use them as well in our efforts to develop a healthy and robust process for our local residents. We believe in this process and know that it will make a lasting impact on the community.

Furthermore, we intend to utilize any commercial space to support local business development and employment. We will seek out local partners for our commercial spaces, and will encourage our commercial partners to advertise job openings to neighborhood residents and give preference to them when hiring.

B. Opportunities for District Neighborhood-Based Businesses

As a minority-owned company that got its own start with a DC public project, The Peebles Corporation knows firsthand the transformative power that a partnership can have for local and minority businesses. The development team pledges to create opportunities for District-based companies throughout all aspects of the projects. Our plan is to connect with the local ANC, churches and the DC-OLBD (DC Office of Local Business Development) to acquire an up to date database of not only District-Based organizations but CBE firms as well. We will use this information to seek out and meet with these firms to get an understanding of their business desires, pipeline, and project success so we can place them in the most successful opportunities for themselves and the projects.

The development team believes that successful projects require positive relationships with local community leaders. For these projects, leaders will include ANC Commissioners, the local Council member, and local resident leaders. We will rely heavily on these neighborhood leaders to identify credible, local enterprises with which we can partner.