VINCENT C. GRAY
MAYOR

NOV 14 2014

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council is a proposed resolution entitled the "Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014."

This resolution will approve the disposition of District owned real property located at 901 5th Street, N.W. ("Property") within the Mount Vernon Triangle. The Property is approximately 20,641 square feet and is currently leased to a parking services company who manages a surface parking lot. It is bordered by surrounding buildings to the east and north as well as an alley behind the property.

The Office of the Deputy Mayor for Planning and Economic Development has selected TPC 5th & I Partners, LLC (Developer") to redevelop the Property into a mixed-use development. The proposed redevelopment project consists of an approximately 200 key hotel, approximately 60 condominium units, 7,600 square-feet of retail, and below-grade parking. The Developer will also renovate two parks in the immediate area, Milian Park and Seaton Park.

In addition to the proposed redevelopment of the Property, the Developer and its affiliate will construct approximately 61 units of affordable housing for households earning at or below 60% of the area median income at 2100 Martin Luther King Jr. Avenue SE.

The selected Developer has proposed a development that will activate this long underutilized property at the corner of Fifth Street and I Street NW, by creating a new mixed-use development. This development will provide over 1100 construction jobs, over 300 permanent jobs, an enhanced pedestrian experience, and improved public safety.

As always, I am available to discuss any questions you may have regarding this resolution. I look forward to prompt and favorable consideration of this resolution.

Sincerely,

Vincent C. Gray

Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve the disposition of District-owned real property, located at 901 Fifth Street N.W., and known for tax and assessment purposes as Parcel 0059 in Square 0516.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014".

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) "CBE Agreement" means an agreement governing certain obligations of the Purchaser or the Developer under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("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).

(2) "Certified Business Enterprise" means a business enterprise or joint venture certified pursuant to the CBE Act.

(3) "First Source Agreement" means an agreement with the District governing certain obligations of the Purchaser or the Developer pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the construction on the Property.

(4) "Property" means the real property located at 901 Fifth Street N.W., known for tax and assessment purposes as Parcel 0059 in Square 0516.

(5) "Purchaser" means the Developer, its successor, or one of its affiliates or assignees approved by the Mayor.

Sec. 3. Findings.

(a) The Developer of the Property will be TPC 5th & I Partners, LLC with a business address of 600 Madison Avenue, 24th Floor, New York, NY 10022 (the "Developer").

(b) The Property is located at 901 Fifth Street N.W., and consists of approximately 20,641 square feet of land.

(c) The intended use of the Property (the "Project") is a hotel and mixed-use residential and retail development and any ancillary uses allowed under applicable law.

(d) The Project will also contain affordable housing as described in the term sheet submitted with this resolution.

(e) The Purchaser will enter into an agreement that shall require the Lessee to, at a minimum, contract with Certified Business Enterprises for at least 35% of the

contract dollar volume of the Project, and shall require at least 20% equity and 20% development participation of Certified Business Enterprises.

(f) The Purchaser will enter into a First Source Agreement with the District that shall govern certain obligation of the Lessee pursuant to D.C. Official Code § 2-219.03 and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment as a result of the construction on the Property.

(g) Pursuant to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et seq.*), the proposed method of disposition is a public or private sale to the bidder providing the most benefit to the District under D.C. Official Code § 10-801(b)(8)(F).

(h) All documents that are submitted with this resolution pursuant to D.C. Official Code § 10-801(b-1) shall be consistent with the executed Memorandum of Understanding or term sheet transmitted to the Council pursuant to D.C. Official Code § 10-801(b-1)(2).

Sec. 4. Approval of disposition.

(a) Pursuant to the Act the Mayor transmitted to the Council a request for approval of the disposition of the Property to the Purchaser.

(b) The Council approves the disposition of the Property.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home

Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Transmittal of resolution.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 6. Effective date.

This resolution shall take effect immediately.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

MEMORANDUM

TO: **Ayesha Abassi**
Legal Affairs and Policy Specialist
Executive Office of the Mayor

FROM: **Janet M. Robins**
Deputy Attorney General
Legal Counsel Division

DATE: **November 10, 2014**

SUBJECT: **"Fifth Street, N.W. and I Street, N.W. Surplus Declaration Resolution of 2014" and "Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014"**
(AE-14-699)

This is to Certify that this Office has reviewed the resolutions entitled the "Fifth Street, N.W. and I Street, N.W. Surplus Declaration Resolution of 2014" and "Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014", and found them to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.

Janet M. Robins

DISPOSITION ANALYSIS
IN SUPPORT OF DISPOSITION OF REAL PROPERTY

Project Name:	5th and I
Property Description:	Lot 0059; Square 0516 901 Fifth Street NW (the "Property")
Size of Property:	20,641 square foot lot
Zoning of Property:	DD/MVT/C-2-C
Ward:	Ward 6
Proposed Purchaser:	TPC 5TH & I PARTNERS LLC (the "Developer")

General Description of Development Program:

The Project is envisioned as a major mixed-use development, with uses to include a hotel, condominiums, ground-floor retail including a restaurant, and below-grade parking. The project is to include approximately 170,000 square feet above grade, which includes approximately 200 hotel rooms, and 7,600 square-feet of retail. The project will also include approximately 60 condominium units, subject to finalized design.

In addition to developing the Project, mentioned above, the developer will renovate two parks in the immediate area, Milian Park and Seaton Park.

As additional consideration for the conveyance of the Property, the Developer and its affiliate, the Affordable Housing Developer (AHD), shall construct approximately 61 Affordable Dwelling Units (ADUs) that will be made available for leasing to households at 60% of AMI. The development will consist of a mix of studio, one-bedroom and two-bedroom units. The preliminary development plan is to construct a 7 story building at 2100 Martin Luther King Jr. Avenue SE.

The Developer executed a labor peace agreement for hotel operations that will provide high quality jobs for District residents.

The hotel will comply with the District's green building requirements and will target a LEED Silver designation or equivalent.

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1. **Proposed Method of Disposition. DC Code § 10-801(b)(8).**

The Property will be conveyed as a fee simple sale by District to Developer pursuant to D.C. Official Code § 10-801(b)(8)(F).

2. **Description of efforts to dispose of Property for direct "public benefit" as described on specific government plan adopted by the Mayor or Council (e.g. Community**

Development Plan, the Comprehensive Plan, the Strategic Neighborhood Plan, or the Comprehensive Housing Strategy Plan). DC Official Code § 10-801(a-2).

a. Public Benefits Requested in Solicitation and Term Sheet.

The District is committed to maximizing community benefits for its residents. In view of this commitment, the solicitation issued for the Property, and subsequent Term Sheet executed August 25, 2014, requested that the respondents' proposals include:

- A residential condominium or rental component, including an affordable housing component;
- Employment opportunities for neighborhood and District residents, to include high quality permanent jobs;
- Executing a Labor Peace Agreement for hotel operations;
- Providing contracting opportunities for Certified Business Enterprises ("CBEs") through executing a CBE utilization and Participation Agreement
- A mixed-use development that contains businesses which serve the neighboring residents and workers;
- Restaurants which will provide a gathering spot for local residents and workers;
- Fund improvements to Milian and Seaton Parks;
- Businesses located on this site must be compatible with residential uses;
- Complying with the District's green building requirements, and will target a LEED Silver designation or equivalent.

b. Describe any Public Benefits in proposed Developer's Development Plan.

The AHD shall construct approximately 61 Affordable Dwelling Units (ADUs) that will be made available for leasing to households at 60% of AMI. The development will consist of a mix of studio, one-bedroom and two-bedroom units. The preliminary development plan is to construct a 7 story building at 2100 Martin Luther King Jr. Avenue SE.

The development at 5th and I Streets will include a hotel providing job opportunities across multiple education and skill levels. This development is projected to create over 1100 total temporary jobs and over 300 total permanent jobs. In addition, the developer has proposed a ground floor restaurant that will activate the corner of 5th and I Streets.

c. Public Uses included in proposed Developer's Development Plan (such as public parks, construction of roads, sidewalks, and other public amenities).

Currently, the Property is being used as a surface parking lot. The proposed development would be of benefit to the public by activating a long underutilized parcel situated along a major artery of the District. The redevelopment will increase daytime activity and create a well-lit streetscape, providing an improved pedestrian experience and better public safety.

In addition to activating the neighborhood and improving the pedestrian experience, the developer will renovate two parks in the immediate area, Milian Park and Seaton Park.

3. **The chosen method of disposition, and how competition was maximized.** DC Official Code § 10-801(b)(8)(F).

   a. Description of solicitation process (include form of solicitation, how solicitation was advertised).

The Office of the Deputy Mayor for Planning and Economic Development ("DMPED") issued a solicitation for offers in April 2013 to provide for an open, transparent, and competitive process.

   b. *Please describe the competitive bid process, including number of responses. Please also summarize each qualified bidder for the property. If no competitive process was followed, please explain why not, and how the Developer was chosen and all key terms of the arrangement.*

The solicitation for offers process engaged a broad cross-section of respondents experienced and capable of creating unique urban-infill environments. DMPED received ten (10) responsive and competitive proposals. An outline of the solicitation process is below:

- Solicitation issued – April 2013
- Deadline for Proposals – July 19, 2013 (10 proposals received)
- Short List teams identified – November 26, 2013 (4 development teams)
  - The Peebles Corporation
  - Trammell Crow Company
  - Akridge
  - The JBG Companies
- Deadline for Best and Final Offers (BAFOs) – February 14, 2014
- Development Team selected – May 5, 2014

Upon an intensive review of the proposals from each responsive team, the review panel selected four (4) development teams for a short list. The 4 development teams met with the community and community representatives during the winter of 2013, and the Development Selection Panel toured the development teams existing projects to gain a better understanding of the development teams experience and quality.

   c. Please describe any public hearings on the potential disposition and any public comment received during the public hearings.

Between December 2007 and May 2014, DMPED, development teams, and the selected development team, met with the community and community representatives numerous times regarding the disposition of the Property. The Public Surplus Hearing was conducted on November 13, 2012. The majority of the community feedback has been focused on how soon the project will break ground and when it will be completed.

4. **The manner in which economic factors were weighted and evaluated, including estimates of the monetary benefits and costs to the District that will result from the disposition. The benefits shall include revenues, fees, and other payments to the District, as well as the creation of jobs.** DC Code § 10-801(b-1)(1)(B).

    a. ***Identify all relevant costs, including property value for the subject and surrounding property, cost of potential rehabilitation, current and / or past cost for upkeep on the Property.***

An independent appraisal completed by Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC concluded the as-is market value of the land to be $17,390,000 or $80 per FAR foot. This value assumes that the project is built per by-right zoning and a multifamily building is developed on the Property. The appraisal provided property values for similar surrounding assets that came in at $68.27-88.33 per FAR foot.

    b. ***Describe potential revenue that could be derived from the Property and how it was maximized in selected disposition method.***

The Property will be conveyed as a fee simple sale, by District to Developer for $28 million dollars, pursuant to D.C. Official Code § 10-801(b)(8)(F). Total tax benefit to the District from construction start to 10 years post stabilization, the project is anticipated to produce in excess of $110 million dollars in tax revenue.

5. **Please describe all disposition methods considered and provide a narrative of the proposed disposition method that contains comparisons to the other methods and shows why the proposed method was more beneficial for the District than the others in the areas of return on investment, subsidies required, revenues paid to the District, and any other relevant category, or why it is being proposed despite it being less beneficial to the District in any of the measured categories.** DC Official Code § 10-801(b-1)(1)(C).

DMPED considered (i) a ground-lease structure and (ii) fee simple sale. After evaluating both options and reviewing the BAFO responses, a fee simple sale was determined to be the most beneficial approach. The sale price is $10.6 million higher than the current appraised value, making a fee simple transaction the most pragmatic method of disposition. In addition, all the BAFO responses proposed a fee simple sale.

TERM SHEET
Disposition of 901 5th Street, NW

Date	November 12, 2014
Seller	District of Columbia ("**District**"), acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**").
Developers	TPC 5TH & I PARTNERS LLC (the "**Developer**"), an affiliate of The Peebles Corporation, a District of Columbia corporation, and MLK DC AH DEVELOPER, LLC (the "**Affordable Housing Developer**"), also an affiliate of The Peebles Corporation (collectively, the "**Developers**").
The Property	The real property located at 901 5th Street, NW, Washington, DC and known for tax and assessment purposes as Lot 59 in Square 516 (the "**Property**").
Land Disposition Agreement	All of the terms and conditions of the sale and purchase of the Property will be governed by the terms of a Land Disposition and Development Agreement (the "**LDDA**") to be negotiated and entered into by District, Developer, and the Affordable Housing Developer.
Method of Disposition	The Property will be conveyed in fee by District to Developer pursuant to D.C. Official Code § 10-801(b)(8)(F).
Purchase Price	As consideration for the transfer of the Property, Developer shall pay to District Twenty-Eight Million Dollars ($28,000,000.00).
The Project	The Project will consist of: 1) the construction on the Property of a mixed-use structure of approximately 170,000 sq. ft. above grade consisting of a hotel (approximately 200 keys), condominiums (approximately 60 units), approximately 7,600 sq. ft. of retail, and approximately 132 underground parking spaces; and 2) the renovation of Milian Park located along Massachusetts Avenue to the immediate south of the Property, and the renovation of Seaton Park located across Massachusetts Avenue to the west (collectively, the "**Project**").
The Affordable Housing Project	As additional consideration for the conveyance of the Property, the Affordable Housing Developer shall construct a building at 2100 Martin Luther King, Jr. Ave., SE (the "**Affordable Housing Property**") containing approximately 61 units, all of which will be affordable dwelling units ("**ADUs**") reserved for leasing to households at or below 60% of AMI (the "**Affordable Housing Project**").
Conditions of Closing	In addition to the other District standard conditions of closing of sale pursuant to the LDDA, District's obligation to convey the Property is conditioned upon: • Developer having obtained financing and equity to fund 100% of the development costs for the Project • the Affordable Housing Financing Closing shall have occurred, or shall occur simultaneously with the Closing • Developer shall have obtained all Permits for construction of the Project, and Affordable Housing Developer shall have obtained all Permits for the construction of the Affordable Housing Project, except for those Permits which are normally obtained during the course of construction of each project, such as elevator permits

	and landscaping permits
Schedule of Performance	Following is the Schedule of Performance with estimated dates, which may be amended and extended with the approval of DMPED, or otherwise upon an event of force majeure: ■ Closing Date of Project under LDDA- within 2 years of Council approval ■ Affordable Housing Financing Closing- on or before Closing Date of Project ■ Commence Construction for the Project- within 4 months of Closing Date of Project ■ Commence Construction for the Affordable Housing Project- within 30 days of the Affordable Housing Financing Closing ■ Completion of Construction for the Project- within 24 months of Commencement of Construction ■ Completion of Construction for the Affordable Housing Project- within 18 months of Commencement of Construction
Post Closing Requirements	Developer shall be bound by the Project Construction and Use Covenant for the construction of the Project. The Affordable Housing Developer shall be bound by an Affordable Housing Covenant and a separate Construction and Use Covenant for the construction of the Affordable Housing Project. The forms of these documents shall be attached to the LDDA.
Project Completion	Developer shall provide a completion guaranty for the construction of the Project from a guarantor approved by District. The Affordable Housing Developer shall provide a completion guaranty for the construction of the Affordable Housing Project from a guarantor approved by District. The forms of these guaranties will be attached to the LDDA.
CBE Agreements	Developers have entered into CBE Agreements for their respective projects reflecting that Developers' 20% CBE developer/equity requirement and 35% CBE contracting requirement have been satisfied for each project.
First Source Requirements	The Developers have entered into a First Source Agreement for their respective projects with the Department of Employment Services, which shall govern certain obligations of the Developers pursuant to D.C. Official Code § 2-219.03, as amended, and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the projects.

INTENTION AND LIMITATIONS OF THIS TERM SHEET

1. Developers and DMPED acknowledge that they have prepared and signed this Term Sheet for the sole purpose of obtaining the approval of the Council of the District of Columbia (the "Council") pursuant to D.C. Official Code § 10-801. Developers acknowledge that DMPED's negotiation of the LDDA and this Term Sheet, DMPED's signature on this Term Sheet, and submission of this Term Sheet and supporting documents to the Council shall not bind the District to execute the LDDA or to convey the Property to the Developer. Developers further acknowledge that, notwithstanding Council authorizing the conveyance of the Property, the District has no obligation to do so absent the District and the Developers duly executing the LDDA and satisfaction of the conditions contained therein. In the event DMPED or the Mayor determine, in their sole and absolute discretion, to withhold submission of this Term Sheet and supporting documents to the Council or to otherwise decline to secure Council authorization for the conveyance, DMPED may terminate negotiations with the Developers and the District shall not be responsible for the Developers' costs and expenses incurred in relation to the Project and the Affordable Housing Project.

2. Developers acknowledge that all approvals required of the Council will be granted or withheld in the sole and absolute discretion of the Council and that, absent Council approval under D.C. Official Code § 10-801, DMPED has no authority to convey the Property to the Developer. Developers acknowledge that they are entering into this Term Sheet prior to obtaining all necessary Council approvals. Developers agree they are proceeding at their sole risk and expense, in the absence of such approvals and execution of the LDA, Developers shall have no recourse whatsoever against the District.

3. Developers and DMPED agree that upon receipt of all necessary Council approvals under D.C. Official Code § 10-801, Developers and DMPED shall finalize and execute an LDDA governing all of the terms and conditions of the purchase and sale of the Property. Until Developers and DMPED enter into the binding LDDA, both Developers and DMPED reserve the right to proceed with the purchase and sale in their sole and absolute discretion. Upon the execution of the LDDA, Developers and DMPED shall proceed in accordance with the terms of the LDDA; provided, however, that Developers and DMPED acknowledge and agree that any substantive change in the terms set forth in this Term Sheet shall be subject to further Council review and approval in accordance with D.C. Official Code 10-801(b-1)(6).

IN WITNESS WHEREOF, DMPED, Developer, and Affordable Housing Developer have caused this Term Sheet, dated November 12, 2014 to be executed and attested by their respective duly authorized representatives.

DISTRICT:

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

By: _____

M. Jeffrey Miller
Interim Deputy Mayor for Planning
and Economic Development

DEVELOPER:

TPC 5TH & I PARTNERS LLC, a District of Columbia limited liability company

BY: TPC 5th & I Manager LLC, a District of Columbia limited liability company

By: _____

R. Donahue Peebles, Jr.
Authorized Signatory

AFFORDABLE HOUSING DEVELOPER:

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

By: _____

R. Donahue Peebles, Jr.
Authorized Signatory

Valbridge
PROPERTY ADVISORS
Lipman Frizzell & Mitchell LLC

Appraisal Report

5th & I Streets, NW
Washington, D.C. 20001
Report Date: November 10, 2014

FOR
Government of the District of Columbia
Office of the Deputy Mayor for Planning & Economic Development
Mr. Will Lee
Project Manager
1350 Pennsylvania Avenue, NW, Suite 317
Washington, D.C. 20004

Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC

Liberty Place at Columbia Crossing
6240 Old Dobbin Lane, Suite 140
Columbia, Maryland 21045
410.423.2300
410.423.2410 fax

valbridge.com

Valbridge Job No.:
MD01-14-0524

Valbridge
PROPERTY ADVISORS
Lipman Frizzell & Mitchell LLC

November 10, 2014

Mr. Will Lee
Project Manager
Government of the District of Columbia
Office of the Deputy Mayor
for Planning & Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, D.C. 20004

RE: Appraisal Report
5th & I Streets, NW
Washington, D.C. 20001

Dear Mr. Lee:

In accordance with your request, we have prepared a real property appraisal of the above-referenced property. This appraisal report sets forth the data gathered, the techniques employed, and the reasoning leading to our value opinions. We previously appraised the property that is the subject of this report for the Government of the District of Columbia in a report dated July 13, 2012.

The subject property is an irregularly shaped parcel of land located in the northeast quadrant of the intersection of 5th and I Streets, NW in in Washington D.C. The property has a street address of 901 5th Street, NW, contains a total of 20,698 sq.ft. of land area, and is presently utilized as paved surface parking.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client.

The Government of the District of Columbia is the client in this assignment and is the sole intended user of the appraisal and report. The intended use is for financial decisions concerning the subject property. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

Based on the analysis contained in the following report, our value conclusion involving the subject property is summarized as follows:

VALUE CONCLUSION

Value Type	Value Premise	Value Perspective	Interest Appraised	Effective Date	Indicated Value
Market Value	As Is	Current	Fee Simple	11/6/2014	$17,390,000

This letter of transmittal is not considered valid if separated from this report, and must be accompanied by all sections of this report as outlined in the Table of Contents, in order for the value opinions set forth above to be valid.

Respectfully submitted,
Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC

Ryland L. Mitchell III, CRE, MAI
Senior Managing Director
Certified General Real Estate Appraiser
District of Columbia License #GA10020
rmitchell@valbridge.com

F. Ford Dennis, Jr.
Senior Appraiser
fdennis@valbridge.com

Table of Contents

Introduction

Summary of Findings

The subject of this report is a 20,698 sq.ft. parcel of land located at 901 5th Street, NW in Washington, D.C. The site is presently used as paved surface parking. Based on our investigations and analyses, it is our opinion that the market value for the subject property as of the effective date of this appraisal is $17,390,000.

Statement of Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.

2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.

3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.

4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.

5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.

6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.

7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.

8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.

9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.

10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.

11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.

12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.

13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.

14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.

15. Distribution of this report is at the sole discretion of the client, but no third-parties not listed as an intended user on the face of the appraisal or the engagement letter may rely upon the contents of the appraisal. In no event shall client give a third-party a partial

copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.

16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC.

17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.

18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

19. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income & Expense Projection" are anticipated.

20. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

21. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.

22. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.

23. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry

methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.

24. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.

25. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.

26. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.

27. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.

28. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the

property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.

29. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.

30. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.

31. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.

32. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

33. You and Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC both agree that any dispute over matters in excess of $5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Lipman Frizzell & Mitchell LLC or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC for this assignment, and under no circumstances shall any claim for consequential damages be made.

34. Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC in such action, regardless of its outcome.

35. The value opinion(s) provided herein is subject to any and all predications set forth in this report.

36. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Lipman Frizzell & Mitchell LLC. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.

37. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.

38. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.

39. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.

Scope of Appraisal

The scope of work includes all steps taken in the development of the appraisal. This includes 1) the extent to which the subject property is identified, 2) the extent to which the subject property is inspected, 3) the type and extent of data researched, 4) the type and extent of analysis applied, and the type of appraisal report prepared. These items are discussed as follows:

Extent to Which the Property Is Identified

- Legal Characteristics
  The subject was legally identified via tax assessment records and a survey.

- Economic Characteristics
  Economic characteristics of the subject property were identified via a comparison to properties with similar locational and physical characteristics.

- Physical Characteristics
  The subject was physically identified via a visual inspection.

Extent to Which the Property Is Inspected

We inspected the subject on November 6, 2014.

Type and Extent of the Data Researched

We researched and analyzed: 1) market area data, 2) property-specific, market-analysis data, 3) zoning and land-use data, and 4) current data on comparable listings and sales in the competitive market area.

Type and Extent of Analysis Applied

The subject site is unimproved. We observed surrounding land use trends, the condition of the nearby improvements, demand for the subject property, and relative legal limitations in concluding a highest and best use. We then valued the subject based on the highest and best use conclusion, relying on the Sale Comparison Approach.

Type of Appraisal and Report Option

This is an Appraisal Report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Purpose of Appraisal

The purpose of this report is to develop an opinion of the market value of the fee simple interest in the subject property in an "As Is"/"By Right" condition, under current real estate market conditions and maximizing development potential under existing zoning.

Summary of Appraisal Problem

The subject of this report is a 20,698 sq.ft. parcel of land located at 901 5th Street, NW in Washington, D.C. The property is to be valued in an "As Is"/"By Right" condition, under current real estate market conditions and maximizing development potential under existing zoning. In order to estimate the market value for the subject, the highest and best use of the property has to be determined. Once the highest and best use of the property is determined, market transactions involving properties with the same highest and best use are analyzed to develop an opinion of market value.

Approaches to Value

There are three traditional approaches to estimating real property value: the cost, sales comparison, and income capitalization approaches.

Cost Approach

The cost approach is based upon the principle of substitution, which states that a prudent purchaser would not pay more for a property than the amount required to purchase a similar site and construct similar improvements without undue delay, producing a property of equal desirability and utility. This approach is particularly applicable when the improvements being appraised are relatively new or when the improvements are so specialized that there is little or no sales data from comparable properties.

Sales Comparison Approach

The sales comparison approach involves the direct comparison of sales and listings of similar properties, adjusting for differences between the subject property and the comparable properties. This method can be useful for valuing general purpose properties or vacant land. For improved properties, it is particularly applicable when there is an active sales market for the property type being appraised – either by owner-users or investors.

Income Capitalization Approach

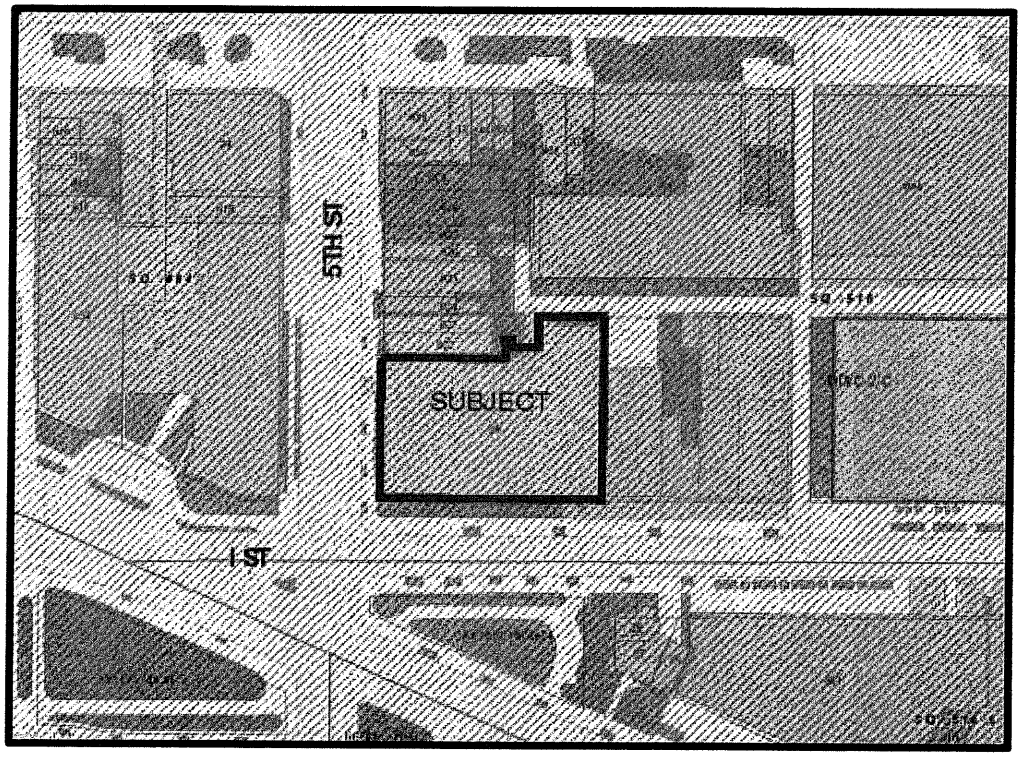
The income capitalization approach is based on the principle of anticipation, or the assumption that value is created by the expectation of benefits to be derived in the future, such as expected future income flows. Its premise is that a prudent investor will pay no more for the property than he or she would for another investment of similar risk and cash flow characteristics. The income capitalization approach is widely used and relied upon in appraising income-producing properties, especially those for which there is an active investment sales market.

Subject Valuation

In a subsequent section of this report, the highest and best use of the subject property is determined to be development with a mixed-use project. Consequently, the value of the subject property is as a development site and the only analysis employed is the sales comparison approach.

Zoning & Other Land Use Regulations

ZONING MAP



Zoning Designation

Zoning Code:	DD/C-2-C
Zoning Designation:	Central Business Center District with Downtown Development Overlay
Purpose:	This district is established to provide facilities for shopping and business needs, housing, and mixed uses in compact areas located in or near the Central Employment Area. The Downtown Development Overlay District is intended to accomplish the policies of the Comprehensive Plan as it relates to these various subareas and to encourage retail, hotel, residential, entertainment, arts and cultural uses in an area where the market tends to favor office development. The subject is in the Mount Vernon Triangle subarea.

Permitted Uses

Permitted uses in the C-2-C district include any use permitted in the C-1 Districts, and include a variety of retail and service uses, offices, parking lots and garages, academic institutions, libraries, hotels, and residential development including single and multi-family dwellings. The C-2-C district permits some additional service and retail uses including, but not limited to, auto dealerships, department stores, and fast food restaurants (without a drive-thru). The C-2-C district also permits assembly halls and theaters.

Development Regulations

The C-2-C district permits a maximum building height of 90 ft. The maximum floor area ratio (FAR) is 6.0 for residential uses and 2.0 for all other permitted uses. The maximum lot coverage for all uses is 80% for residential uses and 100% for all other permitted uses. A minimum rear yard of 15 ft. is required. A total of 15% of gross floor area must be devoted to recreation space for residential buildings.

The DD Overlay permits a maximum FAR of 8.0 with at least 4.5 for residential uses. The maximum FAR may be increased 0.50 through the use of TDR's, the development of affordable housing or the addition of a retail component. Of the required 4.5 FAR of residential space, up to 1.8 FAR of the affordable housing may be developed off-site with commercial or residential FAR substituted on-site. A total of 5% of gross floor area must be devoted to recreation space for residential buildings.

The subject property is located in Housing Priority Area A, Mount Vernon Square North. The objective of this designation is to encourage construction of new housing to help accomplish a balanced mixture of uses essential to a living downtown. Each lot in the Housing Priority Area shall provide on-site or account for off-site by combined lot development residential use and development as required in this section; provided further, that a building or a combined lot development that provides new residential uses on-site shall generate bonus density or transferable development rights as follows:

- Residential development north of Massachusetts Avenue shall generate one sq.ft. of bonus density or transferable development rights for each square foot of residential use developed;

- Residential development south of Massachusetts Avenue shall generate two sq.ft. of bonus density or transferable development rights for each square foot of residential use developed;

- Residential development that qualifies as affordable dwelling units shall generate two sq.ft. of bonus density or transferable development rights for each square foot of affordable housing developed; and

- The bonus density shall not be used to generate transferable development rights.

Information provided by the District of Columbia Government for our previous appraisal of the subject indicated that the property could be developed to a maximum FAR of 10.5 or 217,329 sq.ft. of gross building improvements and a maximum height of 130 ft. using bonus density.

The subject property is also located in the Mount Vernon Triangle Historic District. Any permit application for new construction, exterior alteration, demolition or subdivision involving a landmark or a property within this district requires review by the Historic Preservation Office (HPO) to ensure that the proposed work is compatible with the historic property or district. Major construction, redevelopment, or renovation requires the review of the Advisory Neighborhood Commission (ANC) and the Historic Preservation Review Board (HPRB).

Off-street parking

Off-street parking regulations for multi-family uses in the C-2-C District require one parking space for each four dwelling units. Hotels require one parking space for each two rooms usable for sleeping, plus one space for each 150 sq.ft. of floor area in either the largest function room or the largest exhibit space. Retail or service establishments are required to provide one parking space for each additional 750 sq.ft. in excess of 3,000 gross floor sq.ft.

VIEW OF SUBJECT PROPERTY FROM 5TH STREET, NW

VIEW OF SUBJECT PROPERTY FROM I STREET, NW

Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I appraised the property that is the subject of this report for the Government of the District of Columbia in a report dated July 13, 2012.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Ryland L. Mitchell III, CRE, MAI made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, I, Ryland L. Mitchell III, CRE, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.

Ryland L. Mitchell III, CRE, MAI
Senior Managing Director
Certified General Real Estate Appraiser
District of Columbia License No.: GA10020
rmitchell@valbridge.com

Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
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8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. F. Ford Dennis, Jr. made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, I, F. Ford Dennis, Jr., have completed the Standards and Ethics Education Requirement for Practicing Affiliates of the Appraisal Institute.

F. Ford Dennis, Jr.
Senior Appraiser
fdennis@valbridge.com

Summary of Salient Facts & Conclusions

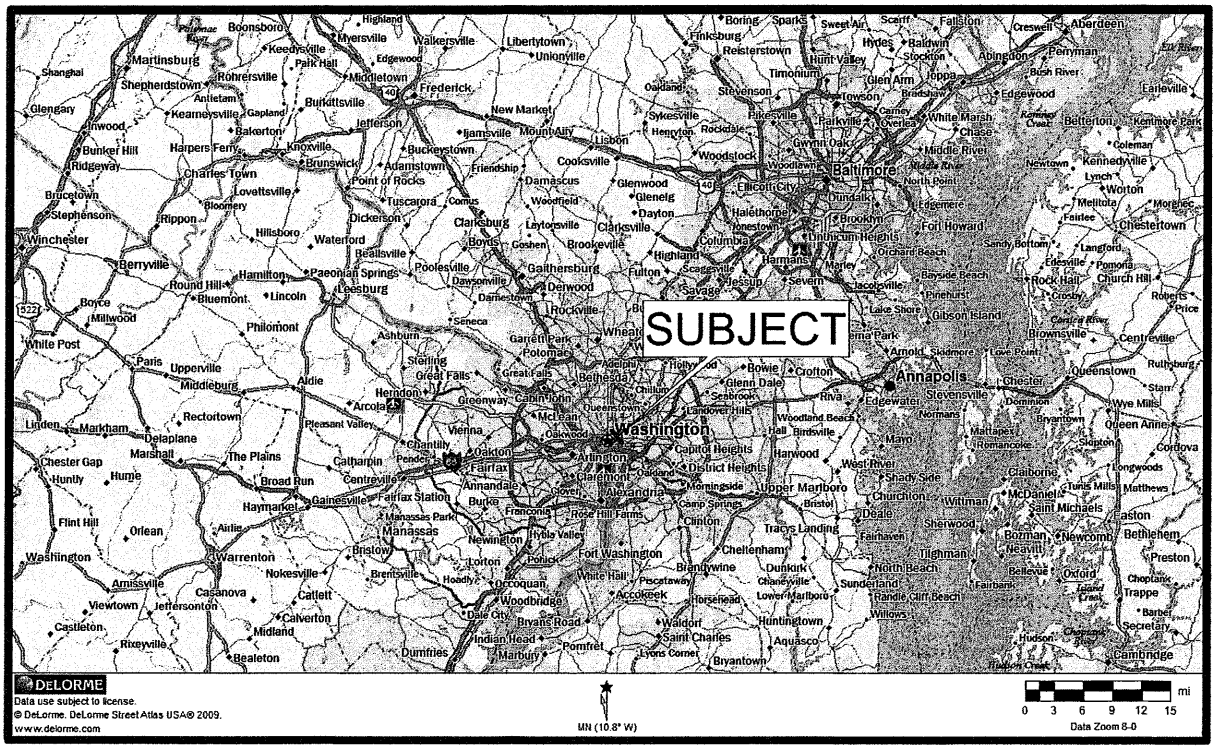
Address:	901 5TH Street, NW Washington, D.C. 20001
Parcel Number:	Square 516, Lot 59
Property Rights Appraised:	Fee simple
Zoning:	DD/C-2-C
Site Size:	20,698 sq.ft.
Existing Improvements:	The subject property is paved with no building improvements.
Extraordinary Assumptions:	None
Hypothetical Conditions:	None
Highest and Best Use	Mixed-use development
Date of Value:	November 6, 2014
Date of Report Preparation:	November 10, 2014

VALUE INDICATIONS & CONCLUDED VALUE

	As Is
Cost Approach	N/A
Sales Comparison Approach	$17,390,000
Income Capitalizaiton Approach	N/A
Market Value Conclusion	**$17,390,000**

Washington, D.C. Metropolitan Area

The Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area (MSA) includes: Calvert, Charles, Frederick, Montgomery and Prince George's Counties in Maryland; Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford and Warren Counties, and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park, located in Northern Virginia; Jefferson County, in West Virginia; and the District of Columbia.



Population, Income & Employment

The Washington MSA's population grew by an average annual rate of 1.5% between 1990 (4,122,259) and 2000 (4,796,183), according to the U.S. Census Bureau. The population for the MSA had an average annual change of 1.6% and a total change of 17.0% from 2003 to 2013. In 2013, the MSA had an estimated population of 5,949,859, an increase of 1.5% over 2012, at 5,862,594. The Washington MSA's population is projected to increase to 6,228,799 in 2020 and 6,854,066 in 2030, according to reports from the Metropolitan Washington Council of Governments Cooperative Forecasts 8.2. A summary of population history and forecast for the Washington Metropolitan MSA is shown in the following chart.

HISTORICAL AND PROJECTED POPULATION

			Average Annual Growth Rates				
	2003	2013	2003-2013	2020	2013-2020	2030	2020-2030
WASHINGTON, D.C. MSA	**5,086,376**	**5,949,859**	**1.6%**	**6,228,799**	**0.7%**	**6,854,066**	**1.0%**
Washington, D.C.	568,502	646,449	1.3%	676,323	0.6%	722,760	0.7%

Sources: U.S. Census Bureau, Population Division: 2003 & 2013: Release Date: March 2014; 2020 & 2030: Metropolitan Washington Council of Governments Cooperative Forecasts 8.2.

In 2013, the Washington, D.C. MSA had an estimated average annual labor force of 3,213,997, with an average unemployment rate of 5.4%, compared to an average rate of 8.3% for the District of Columbia, 6.6% for Maryland, 5.5% for Virginia, 6.5% for West Virginia and the U.S. average unemployment rate of 7.4%. A summary of labor force data for the MSA and unemployment rates for the States of Maryland and West Virginia, the Commonwealth of Virginia, the District of Columbia and the U.S., from 2003 to 2013, is shown in the following chart.

AVERAGE ANNUAL LABOR FORCE AND UNEMPLOYMENT RATES SUMMARY

	Washington, D.C. MSA						
Year	Labor Force	Rate	D.C. Rate	Maryland Rate	Virginia Rate	West VA Rate	U.S. Rate
2003	2,780,248	3.9%	7.0%	4.5%	4.1%	6.0%	6.0%
2004	2,833,955	3.7%	7.5%	4.3%	3.7%	5.3%	5.5%
2005	2,903,238	3.4%	6.5%	4.1%	3.5%	4.9%	5.1%
2006	2,962,332	3.1%	5.7%	3.8%	3.0%	4.5%	4.6%
2007	2,973,242	2.9%	5.5%	3.4%	3.1%	4.2%	4.6%
2008	3,045,734	3.7%	6.6%	4.3%	4.0%	4.2%	5.8%
2009 (S)	3,054,861	6.2%	9.7%	7.4%	7.0%	7.6%	9.3%
2010 (E)	3,102,464	6.5%	10.1%	7.9%	7.1%	8.5%	9.6%
2011 (E)	3,155,857	6.1%	10.2%	7.3%	6.4%	7.8%	8.9%
2012 (E)	3,196,761	5.7%	9.1%	6.9%	5.9%	7.2%	8.1%
2013 (E)	3,213,997	5.4%	8.3%	6.6%	5.5%	6.5%	7.4%

Sources: U.S. Department of Labor, Bureau of Labor Statistics
(S) Reflects adjustments to new state control totals.
(E) Reflects revised inputs, reestimation and adjustment to new state control totals.

In July 2014, the Washington, D.C. MSA had an estimated labor force of 3,273,730, with an unemployment rate of 5.4%, compared to a rate of 7.9% for the District of Columbia, 6.5% for Maryland, 5.4% for Virginia, 6.2% for West Virginia and the U.S. unemployment rate of 6.2%.

The early 1990s produced a depressed economic environment for the Metropolitan area with cutbacks in employment by the Federal Government, the area's largest employer. This was followed by corporate mergers and layoffs in the mid-1990s. By the late 1990s the economy had improved and private sector hiring was strong, with low unemployment and resurgence in demand for commercial development. During 2002, the economy in the Metropolitan area was stagnant with low mortgage interest rates responsible for a strong housing market. By 2005, a strong seller's market developed for both residential and commercial real estate that began to

slow down by year end, as interest rates rose. Sales activity in the housing market declined in 2006 through 2009, while commercial activity remained relatively stable.

According to reports from the U.S. Census Bureau, the estimated median household income for the Washington, D.C. MSA increased from $64,588 in 2002 to $81,950 in 2012, an average annual increase of 2.4% and a total change of 26.9%. The MSA's 2012 median income was 2.0% lower than the 2011 median income of $83,583. Median income for the MSA was 25.6% higher than the District of Columbia's median household income of $65,231, 15.1% higher than Maryland's income of $71,169, 32.6% higher than Virginia's income of $61,782 and 103.9% higher than West Virginia's median household income of $40,188. Median household income for the Washington, D.C. MSA from 2002 to 2012 is shown in the following chart.

MEDIAN HOUSEHOLD INCOME

Year	Income	Annual % Change	Total % Change
2002	$64,588	-	-
2003	$66,273	2.6%	2.6%
2004	$68,330	3.1%	5.8%
2005	$71,013	3.9%	9.9%
2006	$76,929	8.3%	19.1%
2007	$80,086	4.1%	24.0%
2008	$81,696	2.0%	26.5%
2009	$82,470	0.9%	27.7%
2010	$81,647	-1.0%	26.4%
2011	$83,583	2.4%	29.4%
2012	$81,950	-2.0%	26.9%
Average Annual % Change		2.4%	

Source: U.S. Census Bureau

Housing

The residential market in the Washington Metropolitan area was extremely active during the first half of this decade, although home sales began to slow in 2006 and pricing began to decline since that time. The extreme expansion experienced between 2000 and 2005 ended and the market is in the process of finding equilibrium.

According to reports from the Metropolitan Regional Information Systems, Inc. (MRIS), in 2013, the MSA had an average home sale price of $373,125, an increase of 7.5% over 2012, at $347,026. During the same period, the number of units sold in the MSA went from 68,044 in 2012 to 74,990 in 2013, an increase of 10.2%. Average home sale prices in the MSA for Maryland counties, Virginia counties and cities, Jefferson County, West Virginia and the District of Columbia, from 2009 to 2013 are shown in the following chart.

AVERAGE ANNUAL HOME SALE PRICES

	2009	2010	% Change	2011	% Change	2012	% Change	2013	% Change
Maryland Counties									
Calvert County	$324,081	$307,886	-5.0%	$308,588	0.2%	$310,030	0.5%	$321,844	3.8%
Charles County	$273,693	$257,677	-5.9%	$231,596	-10.1%	$239,249	3.3%	$249,910	4.5%
Frederick County	$265,563	$262,445	-1.2%	$252,473	-3.8%	$267,285	5.9%	$296,077	10.8%
Montgomery County	$434,297	$441,492	1.7%	$451,479	2.3%	$465,597	3.1%	$500,316	7.5%
Prince George's County	$231,284	$201,193	-13.0%	$181,547	-9.8%	$190,274	4.8%	$212,073	11.5%
District of Columbia									
	$484,990	$505,854	4.3%	$517,797	2.4%	$552,271	6.7%	$588,330	6.5%
Virginia Counties									
Arlington County	$519,564	$541,665	4.3%	$557,853	3.0%	$574,670	3.0%	$603,955	5.1%
Clarke County	$336,623	$288,100	-14.4%	$275,065	-4.5%	$321,098	16.7%	$331,450	3.2%
Fairfax County	$417,111	$457,174	9.6%	$471,317	3.1%	$492,480	4.5%	$531,136	7.8%
Fauquier County	$325,372	$326,294	0.3%	$330,574	1.3%	$356,452	7.8%	$363,281	1.9%
Loudoun County	$373,275	$403,656	8.1%	$418,120	3.6%	$431,003	3.1%	$461,072	7.0%
Prince William County	$237,624	$276,881	16.5%	$284,173	2.6%	$305,330	7.4%	$336,449	10.2%
Spotsylvania County	$222,433	$218,697	-1.7%	$212,717	-2.7%	$220,587	3.7%	$249,590	13.1%
Stafford County	$244,852	$258,950	5.8%	$249,554	-3.6%	$270,174	8.3%	$295,716	9.5%
Warren County	$169,174	$160,006	-5.4%	$152,608	-4.6%	$171,991	12.7%	$189,299	10.1%
Virginia Cities									
Alexandria City	$428,538	$453,979	5.9%	$469,664	3.5%	$486,908	3.7%	$517,865	6.4%
Fairfax City	$373,090	$425,957	14.2%	$425,954	0.0%	$458,562	7.7%	$485,306	5.8%
Falls Church City	$563,635	$562,565	-0.2%	$590,176	4.9%	$614,982	4.2%	$681,313	10.8%
Fredericksburg City	$243,364	$244,011	0.3%	$238,712	-2.2%	$266,525	11.7%	$281,360	5.6%
Manassas City	$156,996	$183,656	17.0%	$199,737	8.8%	$226,626	13.5%	$256,817	13.3%
Manassas Park City	$157,903	$198,777	25.9%	$195,151	-1.8%	$225,384	15.5%	$245,193	8.8%
West Virginia County									
Jefferson County	$199,432	$184,906	-7.3%	$179,327	-3.0%	$187,087	4.3%	$210,396	12.5%
MSA AVERAGE PRICE	**$317,404**	**$325,537**	**2.6%**	**$327,008**	**0.5%**	**$347,026**	**6.1%**	**$373,125**	**7.5%**

Source: Metropolitan Regional Information Systems, Inc.-MLS Resale Data. Figures above include average prices of single-family detached/attached homes and condominium units sold.

In August 2014, the MSA has an average home sale price of $396,158, an increase of 5.1% over August 2013, at $376,975. During the same period, the number of units sold in the MSA went from 7,184 in August 2013 to 6,600 in August 2014, a decrease of 8.1%.

Residential construction activity decreased between 2005 and 2009. The Washington, D.C. MSA issued new residential building permits for 24,033 dwelling units in 2013, an increase of 7.3% over 2012, at 22,404 units, according to reports from the State of the Cities Data Systems (SOCDS). Of those permits issued in 2013, 13,274 were for single-family units, an increase of 20.9% over 2012, at 10,980 single-family units. During the same period, the MSA issued multi-family permits for 10,759 units, a decrease of 5.8% from 2012, at 11,424 multi-family units. The number of units for permits issued from 2003 to 2013 in the Washington, D.C. MSA is shown in the following chart.

RESIDENTIAL BUILDING PERMITS

	Number of Units			2002 - 2012	
Year	Single-Family	Multi-Family	Total	Annual % Change	Total % Change
2003	27,986	7,861	35,847	-	-
2004	26,940	11,084	38,024	6.1%	6.1%
2005	25,918	10,858	36,776	-3.3%	2.6%
2006	18,471	9,487	27,958	-24.0%	-22.0%
2007	14,551	7,908	22,459	-19.7%	-37.3%
2008	9,321	4,411	13,732	-38.9%	-61.7%
2009	8,954	3,375	12,329	-10.2%	-65.6%
2010	9,488	3,577	13,065	6.0%	-63.6%
2011	9,644	10,013	19,657	50.5%	-45.2%
2012	10,980	11,424	22,404	14.0%	-37.5%
2013	13,274	10,759	24,033	7.3%	-33.0%

Source: HUD USER Policy Development and Research Information Service, State of the Cities Data Systems (SOCDS).

Commercial/Industrial Markets

In first quarter 2014, reports from Jones Lang LaSalle indicated that there are competing influences which have impacted the Metro D.C. economy. The growth of high-tech and other creative sectors contrasts with decreasing payrolls within the federal government. A federal budget was passed, yet agencies have had to wrestle with the implementation of spending cuts and modernization of their workplaces, according to Jones Lang LaSalle.

Currently, tenant demand remains limited, but the pullback on new construction should have a beneficial effect on the Metro D.C. office market over the next two years. The District of Columbia's downtown properties are outperforming Suburban Maryland and Northern Virginia, which are experiencing occupancy losses.

In second quarter 2014, the MSA had 481.3 million square feet of office RBA, with a vacancy rate of 14.6%, according to reports from CoStar. Industrial/Flex RBA in the MSA totaled 234.0 million square feet, with a vacancy rate of 10.2%. The MSA had retail space totaling 256.7 million square feet, with a vacancy rate of 4.5%. The Washington, D.C. MSA had a total combined RBA of 972.0 million square feet, with an overall vacancy rate of 10.8%. The MSA's RBA for office, industrial/flex, retail and combined space and vacancy rates for fourth quarters 2008 through 2013 and second quarter 2014 are shown in the following chart.

COMMERCIAL RBA AND VACANCY RATES

Year/Qtr.	Total RBA	Vacancy Rates
Office		
2014 2Q	481,289,052	14.6%
2013 4Q	478,727,752	14.0%
2012 4Q	474,715,768	13.5%
2011 4Q	471,582,356	13.3%
2010 4Q	468,849,173	13.2%
2009 4Q	463,962,173	13.4%
2008 4Q	456,339,874	11.9%
Industrial/Flex		
2014 2Q	233,981,684	10.2%
2013 4Q	233,686,679	10.6%
2012 4Q	231,591,918	10.9%
2011 4Q	230,415,881	11.8%
2010 4Q	229,082,629	12.5%
2009 4Q	228,472,838	12.8%
2008 4Q	226,493,314	10.9%
Retail		
2014 2Q	256,724,091	4.5%
2013 4Q	256,203,771	4.6%
2012 4Q	254,131,121	4.9%
2011 4Q	252,506,557	5.0%
2010 4Q	250,909,309	5.1%
2009 4Q	248,792,982	5.6%
2008 4Q	245,963,705	4.5%
Combined		
2014 2Q	971,994,827	10.8%
2013 4Q	968,618,202	10.7%
2012 4Q	960,438,807	10.6%
2011 4Q	954,504,794	10.7%
2010 4Q	948,841,111	10.9%
2009 4Q	941,227,993	11.2%
2008 4Q	928,796,893	9.7%

Source: CoStar

Transportation/Accessibility

The Washington Metropolitan Area's highway network is extensive and provides access to points in all directions. In suburban Maryland, major arteries include I-70, I-270, I-495, I-95; U.S. Routes. 50/301, 1, 29, 40; Md. Routes 355, 97, 650, 108, 450, 214, 4, 5; and many heavily traveled county roads. This highway system serves to connect the Washington Metropolitan Area with the Maryland cities of Baltimore, Annapolis, and Frederick. In northern Virginia, major arteries include I-66, I-495, I-95; U. S. Routes 1, 29, 50; Virginia Routes 123, 7, 236, 28; and many heavily traveled county roads. This highway system in northern Virginia links the Washington Metropolitan Area with the cities of Winchester, Charlottesville, Fredericksburg and Richmond.

An 18.8-mile Inter County Connector (I-200) toll road has been completed from I-270/I-370 to I-95 (Contracts A-C), which greatly eases east/west travel linking Prince George's and Montgomery Counties, according to reports from the Maryland Department of Transportation. The limited access highway begins from the west at I-270/I-370 in Montgomery County, MD and will eventually end at US 1 in Prince George's County, MD.

The ICC is a limited access toll facility that has been constructed in the following sequence:

A. I-270/I-370 to MD 97 - 7.2 mainline miles of six-lane highway (opened February 2011).

B. MD 97 to US 29 – 6.9 mainline miles of six-lane highway (opened November 2011).

C. US 29 to I-95 - 3.8 mainline miles of six-lane highway (opened November 2011).

Elements of the two remaining segments (Contracts D/E) have been modified and combined and are expected to open to traffic late summer/early fall 2014.

D./E. Contract D/E Modified will consist of a reduced length of collector-distributor road along I-95 and will include the extension of the ICC from the eastern terminus of Contract C to an at-grade intersection at Virginia Manor Road. The Contract will also include an option to construct the ICC/Virginia Manor Road interchange and extend the ICC to US 1 (.9 mainline miles).

The area is also served by excellent rail service and three major airports: Baltimore/Washington International Thurgood Marshall Airport (BWI); Ronald Reagan Washington National Airport; and Washington Dulles International Airport.

The Metro area also has access to the Helen Delich Bentley Port of Baltimore which comprises one of the largest foreign tonnage ports in the U.S. Located at Dundalk, Curtis Bay, Locust Point and Canton Yards; the Port is a significant economic engine for the region. Currently, the Port moves more than 40 million tons of bulk and container cargo, according to reports from the Port of Baltimore. Because of its strategic Mid-Atlantic location, inland setting and 50-foot channel, the Port is one of America's top container terminals. It is a leading U.S. automobile and break-bulk port with six public terminals and a state-of-the-art Intermodal Container Transfer Facility and is ranked as one of the nation's top, and the East Coast's number one, "Ro/Ro" (roll-on/roll-off) ports.

The metropolitan area is served by METRO, a rapid rail subway system which is operated by the Washington Metropolitan Area Transit Authority (WMATA) and which also operates extensive bus services. Metro rail serves to connect suburban areas of Maryland and Virginia with the District of Columbia. Regional commuters also have access to the Virginia Rail Express, MARC (Maryland Rail Commuter), and Amtrak trains.

The Great Recession

In late 2007, financial markets began to deteriorate from a period of rapid growth in real estate prices and economic activity during the 2000s. What followed was a deep and unprecedented global economic recession, which has come to be known as The Great Recession. Real estate markets in particular have been profoundly affected by this recession in comparison to past recessions.

One of the most destructive legacies of The Great Recession has been the nationwide erosion in home prices following dramatic increases in the mid-2000s which were fueled by easy credit and speculation. In the Washington, D.C. MSA, the average home sale price increased from $194,362 in 2000 to $438,554 in 2006, or 125.6%. By 2013, it averaged $373,125, a decrease of 14.9% from the high. Residential building permits decreased from a peak of 38,024 in 2004 to 24,033 in 2013, a decrease of 36.8%.

In addition, the effects of The Great Recession can be found in unemployment, which, in the Washington, D.C. MSA, averaged 3.5% annually between 2003 and 2008, with a high of 3.9% in 2003 and a low of 2.9% in 2007. In 2009, unemployment jumped to 6.2% and to 6.5% in 2010. The unemployment rate in the MSA decreased to 6.1% in 2011, 5.7% in 2012 and 5.4% in 2013.

Median household income in the MSA increased by 8.3% in 2006 then decreased by 2.0% in 2012. Vacancy rates have also increased for nearly all commercial property types since 2008.

The duration and far reaching impact of The Great Recession has been unprecedented as have been measures in monetary and fiscal policy undertaken by the U.S. Government to combat the ongoing problems. The Federal Reserve has lowered the Federal Funds Target Rate to a range of 0 to 0.25%, the lowest rate since December of 2008 and over $5 trillion has been added to the nation's debt since January of 2008. Standard & Poor's Ratings Services revised its outlook on the U.S. long-term rating from AAA to AA+ to reflect future concerns regarding the ability of the U.S. Government to fulfill its obligations with increased debt loads, without a major change in policy.

Conclusions

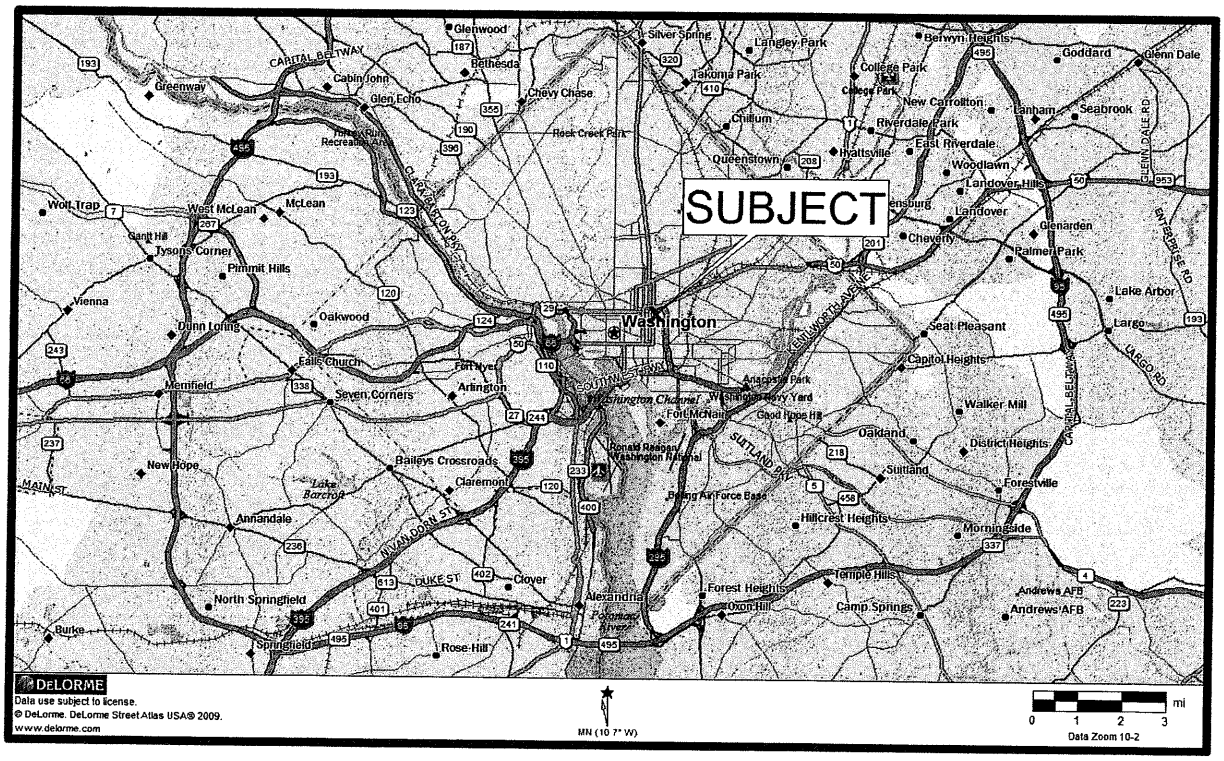
During the last three years, the Washington, D.C. MSA has shown signs of stabilization. The MSA experienced increases in the average home sale price in 2010 (2.6%), 2011 (0.5%), 2012 (6.1%) and 2013 (7.5%), after decreases in 2008 and 2009. The average unemployment rate decreased in 2011 through 2013, after increasing unemployment in 2009 and 2010. These recent signs of stabilization indicate the process of recovery may be beginning, however, the future outlook remains uncertain.

The Washington, D.C. MSA's economic base will continue to be a positive influence as it recovers in the years to come. Economic growth may not again reach the pace set in the mid-2000s, however, the MSA's favorable demographic trends and location will assist in stabilizing and, ultimately, growing its economy.

Washington, D.C. Analysis

Location

The District of Columbia is at the center of the Washington metropolitan area. It is surrounded by suburban areas of Maryland and Virginia. Washington, D.C. is the capital of the United States and the seat of our nation's government.



Population

The U.S. Census Bureau estimated the District of Columbia's 2000 population at 572,086, which showed an average annual decrease of 1.2% from 1980, at 638,432. In 2013, the District had an estimated population of 646,449, an increase of 2.1% over 2012, at 633,427. The District experienced an average annual increase in population of 1.3% and a total increase of 13.7% from 2003 to 2013. According to the *Round 8.2 Cooperative Forecast*, published by the Metropolitan Washington Council of Governments (MWCOG), the District's population is projected to increase to 676,323 in 2020 and 722,760 in 2030. A summary of population history and forecast is shown in the following chart.

HISTORICAL AND PROJECTED POPULATION

			Average Annual Growth Rates				
	2003	2013	2003-2013	2020	2013-2020	2030	2020-2030
WASHINGTON, D.C. MSA	5,086,376	5,949,859	1.6%	6,228,799	0.7%	6,854,066	1.0%
Washington, D.C.	**568,502**	**646,449**	**1.3%**	**676,323**	**0.6%**	**722,760**	**0.7%**

Sources: U.S. Census Bureau, Population Division: 2003 & 2013: Release Date: March 2014; 2020 & 2030: Metropolitan Washington Council of Governments Cooperative Forecasts 8.2.

Employment

Extensive employment by the Federal Government exists in the Washington area with much of this activity within the District of Columbia. A summary of the District's labor market, broken down by industry, is shown in the following chart.

SUMMARY OF EMPLOYMENT

	Annual 2012	Annual 2013	2012-2013 % Change	July 2014	2013-2014 % Change
Civilian Labor Force*	364.5	370.5	1.6%	380.9	2.8%
Employment*	331.5	339.7	2.5%	350.7	3.2%
Unemployment*	33.0	30.8	-6.7%	30.2	-1.9%
Unemployment Rate*	9.1%	8.3%	-8.2%	7.9%	-4.6%
Federal & Local Government	242.6	237.0	-2.3%	234.6	-1.0%
Natural Resources, Mining & Construction	13.5	13.4	-0.7%	14.0	4.5%
Manufacturing*	1.0	0.9	-10.0%	0.8	-11.1%
Trade, Transportation & Utilities	27.8	27.3	-1.8%	31.3	14.7%
Information	17.3	16.6	-4.0%	16.9	1.8%
Financial Activities	28.1	28.8	2.5%	28.9	0.3%
Professional & Business Services	153.1	155.9	1.8%	159.8	2.5%
Educational & Health Services	114.6	117.5	2.5%	128.4	9.3%
Leisure & Hospitality	65.3	67.7	3.7%	70.1	3.5%
Other Services	68.0	68.4	0.6%	68.9	0.7%
Total Wage and Salary Employment	731.3	733.5	0.3%	753.7	2.8%

** Not Seasonally Adjusted* *Figures in Thousand*

Source: D.C. Dept. of Employment Services (DOES), Office of Labor Market Research and Information in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

In 2013, the estimated annual average civilian labor force for residents of the District of Columbia was 370,482, with an average unemployment rate of 8.3% (not seasonally adjusted), compared to an average rate of 6.6% for the State of Maryland, 5.5% for the Commonwealth of Virginia, and the U.S. unemployment rate of 7.4% (seasonally adjusted). Within the District of Columbia, total employment of both residents and commuters was an estimated average of 733,500 workers in 2013.

In July 2014, the District of Columbia had an estimated civilian labor force of 380,941, with an unemployment rate of 7.9% (not seasonally adjusted), compared to a rate of 6.5% for the State of Maryland, 5.4% for the Commonwealth of Virginia and the U.S. unemployment rate of 6.2%. Of the total workers in the District, government employment accounts for 31% of the work force with the remaining 69% in the private sector. The Top 20 private sector employers in the District of Columbia are listed in the following chart.

TOP TWENTY PRIVATE SECTOR EMPLOYERS

ORGANIZATIONS*	
1. Howard University	11. The Washington Post
2. Georgetown University	12. Corporate Advisory Board
3. George Washington University	13. Catholic University of America
4. Washington Hospital Center	14. Sibley Memorial Hospital
5. Children's National Medical Center	15. Marriott Hotel Services
6. Fannie Mae	16. George Washington University Hospital
7. Georgetown University Hospital	17. American National Red Cross
8. American University	18. Admiral Security
9. Providence Hospital	19. Hyatt Regency
10. Howard University Hospital	20. Safeway, Inc.

Source: Based on data from the Quarterly Covered Employment and Wage (QCEW) Program, a Bureau of Labor Statistics federal/state cooperative statistical program.
**Ranked by size of workforce.*

Income

According to reports from the U.S. Census Bureau, the median household income for the District of Columbia increased from $40,617 in 2002, to $65,231 in 2012, an average annual increase of 4.9% and a total increase of 60.6%. The District's median household income was 20.4% lower than the Washington, D.C. MSA's median income of $81,950. Median income for Washington, D.C. from 2002 to 2012 is shown in the following chart.

MEDIAN HOUSEHOLD INCOME

Year	Income	Annual % Change	Total % Change
2002	$40,617	-	-
2003	$43,215	6.4%	6.4%
2004	$46,211	6.9%	13.8%
2005	$48,078	4.0%	18.4%
2006	$51,746	7.6%	27.4%
2007	$54,812	5.9%	34.9%
2008	$58,553	6.8%	44.2%
2009	$58,906	0.6%	45.0%
2010	$60,729	3.1%	49.5%
2011	$62,087	2.2%	52.9%
2012	$65,231	5.1%	60.6%
Average Annual % Change		4.9%	

Source: U.S. Census Bureau

Assessable Tax Base

The assessable tax base is affected by physical growth, economic conditions and market pricing. The District's fiscal year is from October 1st to September 30th. In fiscal years 1999 through 2001, the District used a triennial assessment system. Properties in the District were divided into three assessment groups, called triennial groups (or tri-groups). Each tri-group represented approximately a third of the total value of taxable real property in the District. Annual decreases in assessed value were immediately realized under the triennial assessment system, while annual increases in assessed value were phased in over a three-year period. This reduced the instability of year-to-year growth rates by significantly limiting annual growth assessment increases.

In FY 2013 (as of the District of Columbia's FY 2013 CAFR), the District of Columbia had a tax base of $151.745 billion, an increase of 3.6% over 2012, at $146.502 billion. The District of Columbia has experienced an average annual increase of 10.1% and a cumulative change of 161.3% from 2003 to 2013, as set forth in the following chart.

ASSESSABLE TAX BASE

Fiscal Year*	Tax Base (In $Billions)	Annual % Change	Cumulative Change
2003	$58.064	-	-
2004	$66.454	14.5%	14.5%
2005	$86.888	30.7%	49.6%
2006	$98.491	13.4%	69.6%
2007	$124.875	26.8%	115.1%
2008	$142.958	14.5%	146.2%
2009	$153.040	7.1%	163.6%
2010	$150.117	-1.9%	158.5%
2011	$139.288	-7.2%	139.9%
2012	$146.502	5.2%	152.3%
2013	$151.745	3.6%	161.3%
Average Annual % Change		10.1%	

Source: Office of Tax and Revenue - District of Columbia.
** For Tax Years ending September 30th.*

Retail Sales

According to financial reports from the District of Columbia's Office of Tax and Revenue, the District had taxable retail sales of $13.083 billion in 2013, an increase of 3.8% over 2012, at $12.610 billion. The District has experienced an average annual increase in sales of 5.5% and a cumulative change of 70.3% from 2003 to 2013, as shown in the following chart.

RETAIL SALES

Fiscal Year*	Retail Sales (In $Billions)	Annual % Change	Cumulative Change
2003	$7.683	-	-
2004	$8.343	8.6%	8.6%
2005	$10.487	25.7%	36.5%
2006	$10.051	-4.2%	30.8%
2007	$9.971	-0.8%	29.8%
2008	$11.048	10.8%	43.8%
2009	$10.198	-7.7%	32.7%
2010	$11.191	9.7%	45.7%
2011	$11.697	4.5%	52.2%
2012	$12.610	7.8%	64.1%
2013	$13.083	3.8%	70.3%
Average Annual % Change		5.5%	

Source: DC Office of Research & Analysis; District of Columbia FY 2013 CAFR.
** For Tax Years ending September 30th.*

Housing

According to reports from Metropolitan Regional Information Systems, Inc. (MRIS), the average home sale price in the District in 2013 was $588,330, an increase of 6.5% over 2012, at $552,271. The number of units sold in the District went from 6,905 in 2012 to 7,907 in 2013, an increase of 14.5%. Historical changes in average sale price and number of units sold from 2003 to 2013 are shown in the following chart.

AVERAGE HOME SALE PRICES AND UNITS SOLD

Year	Units Sold	% Change	Avg. Price	% Change
2003	8,568	--	$381,690	--
2004	9,005	5.1%	$448,778	17.6%
2005	9,100	1.1%	$534,646	19.1%
2006	7,721	-15.2%	$528,719	-1.1%
2007	7,415	-4.0%	$538,418	1.8%
2008	5,569	-24.9%	$538,697	0.1%
2009	6,438	15.6%	$484,990	-10.0%
2010	6,593	2.4%	$505,854	4.3%
2011	6,460	-2.0%	$517,797	2.4%
2012	6,905	6.9%	$552,271	6.7%
2013	7,907	14.5%	$588,330	6.5%

Source: Metropolitan Regional Information Systems, Inc. (MRIS)

In August 2014, the average home sale price in the District was $581,505, a decrease of 0.9% from August 2013, at $587,028. During the same period the number of units sold in the District went from 752 in August 2013 to 666 in August 2014, a decrease of 11.4%.

According to reports from the U.S. Census Bureau, in 2013, the District of Columbia issued new residential building permits for 3,255 dwelling units (including multi-family), a decrease of 14.9% from 2012, at 3,823 units. Of those permits issued in 2013, 333 were for single-family units, an increase of 22.9% over 2012, at 271 single-family units. During the same period, multi-family permits were issued in the District for 2,922 units, a decrease of 17.7% from 2012, at 3,552 units.

The dollar value of all new residential building permits issued in the District in 2013 was $279.9 million, a decrease of 40.6% from 2012, at $471.5 million. The number of units and construction costs for building permits issued in the District of Columbia from 2003 to 2013 are shown in the following chart.

RESIDENTIAL BUILDING PERMITS

	Number of Units				Construction Costs ($millions)			
Year	Single-Family	Multi-Family	Total	Annual % Change	Single-Family	Multi-Family	Total	Annual % Change
2003	152	1,275	1,427	--	$18.5	$77.2	$95.7	--
2004	226	1,710	1,936	35.7%	$22.2	$203.1	$225.2	135.3%
2005	125	2,735	2,860	47.7%	$18.3	$209.9	$228.1	1.3%
2006	126	1,979	2,105	-26.4%	$20.4	$279.2	$299.5	31.3%
2007	576	1,334	1,910	-9.3%	$79.4	$137.5	$216.8	-27.6%
2008	248	288	536	-71.9%	$40.9	$26.2	$67.1	-69.0%
2009	151	975	1,126	110.1%	$27.7	$103.8	$131.5	95.9%
2010	177	562	739	-34.4%	$30.7	$74.7	$105.5	-19.8%
2011	227	4,385	4,612	524.1%	$44.7	$564.6	$609.4	477.8%
2012	271	3,552	3,823	-17.1%	$48.8	$422.7	$471.5	-22.6%
2013	333	2,922	3,255	-14.9%	$66.9	$213.0	$279.9	-40.6%

Source: U.S.Census Bureau

Commercial/Industrial Markets

In first quarter 2014, reports from Jones Lang LaSalle indicated that there are competing influences which have impacted the Metro D.C. economy. The growth of high-tech and other creative sectors contrasts with decreasing payrolls within the federal government. A federal budget was passed, yet agencies have had to wrestle with the implementation of spending cuts and modernization of their workplaces, according to Jones Lang LaSalle.

Currently, tenant demand remains limited, but the pullback on new construction should have a beneficial effect on the Metro D.C. office market over the next two years. The District of Columbia's downtown properties are outperforming Suburban Maryland and Northern Virginia, which are experiencing occupancy losses.

In second quarter 2014, CoStar reported the District's existing office RBA totaled 151.4 million square feet, with a vacancy rate of 10.7%. Industrial/flex space in the District totaled 12.4 million square feet, with a vacancy rate of 6.9% and retail space totaled 22.1 million square feet, with a vacancy rate of 4.5%. The District of Columbia had a total combined RBA of 185.9 million square feet, with an overall vacancy rate of 9.7%. The District of Columbia's RBA for office, industrial/flex, retail and combined space and vacancy rates for fourth quarters 2008 through 2013 and second quarter 2014 are shown in the following chart.

COMMERCIAL RBA AND VACANCY RATES

Year/Qtr.	Total RBA	Vacancy Rates
Office		
2014 2Q	151,397,580	10.7%
2013 4Q	150,533,839	10.4%
2012 4Q	149,131,643	9.9%
2011 4Q	148,602,091	10.8%
2010 4Q	147,467,085	11.3%
2009 4Q	144,855,442	11.8%
2008 4Q	141,437,928	9.4%
Industrial/Flex		
2014 2Q	12,369,028	6.9%
2013 4Q	12,369,028	7.0%
2012 4Q	12,369,028	6.4%
2011 4Q	12,369,028	9.4%
2010 4Q	12,247,420	8.4%
2009 4Q	12,247,420	8.3%
2008 4Q	12,247,420	6.1%
Retail		
2014 2Q	22,105,667	4.5%
2013 4Q	22,088,483	4.5%
2012 4Q	21,737,354	5.1%
2011 4Q	21,454,925	5.0%
2010 4Q	21,433,116	5.6%
2009 4Q	21,322,640	6.1%
2008 4Q	21,246,744	4.6%
Combined		
2014 2Q	185,872,275	9.7%
2013 4Q	184,991,350	9.4%
2012 4Q	183,238,025	9.1%
2011 4Q	182,426,044	10.1%
2010 4Q	181,147,621	10.4%
2009 4Q	178,425,502	10.9%
2008 4Q	174,932,092	8.6%

Source: CoStar

Transportation

The District of Columbia Metropolitan Region has three major Northern Virginia interstates (I-95, I-66 and I-395) and two Suburban Maryland highways (I-270 and Route 50), as well as the Maryland portion of I-95, I-70, I-295, and the Capital Beltway, I-495.

Residents and commuters have access to the Greater Washington's METRO rail system which is the second-most utilized subway system in the nation. The District is also served by the MARC commuter trains, the VRE (Virginia Railway Express), and Amtrak.

Three major airports serve the Washington, D.C. area. They include, Baltimore/Washington International Thurgood Marshall Airport, Washington Dulles International Airport, and Ronald Reagan Washington National Airport.

The Great Recession

One of the most destructive legacies of The Great Recession has been the nationwide erosion in home prices following dramatic increases in the mid-2000s which were fueled by easy credit and speculation. In the District of Columbia, the average home sale price increased from $250,516 in 2000 to $538,697 in 2008, or 115.0%. In 2013, it averaged $588,330, an increase of 9.2% over the previous high. Residential building permit values decreased from a peak of $609.4 million in 2011 to $279.9 million in 2013, a decrease of 54.1%.

The District of Columbia, unlike many other DC metro areas, generated growing retail sales throughout the decade (with some decreases occurring in 2006, 2007 and 2009), growing from $7.683 billion in 2003 to $13.083 billion in 2013, a cumulative increase of 70.3%.

In addition, the effects of The Great Recession can be found in unemployment, which, in the District, averaged 6.5% annually between 2003 and 2008, with a high of 7.5% in 2004 and a low of 5.5% in 2007. In 2009, unemployment jumped to 9.7% then increased to 10.1% in 2010 and 10.2% in 2011. The unemployment rate in the District decreased to 9.1% in 2012 and 8.3% in 2013.

Median household income in the District increased by 7.6% in 2006 then slowed to an increase of 5.1% in 2012. The District of Columbia's assessable tax base decreased from $153.0 billion in 2009 to $151.7 billion in 2013, after steady increases from 2002 to 2009. Vacancy rates have also increased for nearly all (except retail) commercial property types since 2008.

Conclusions

In the Washington area, and the District of Columbia in particular, there is extensive employment by the Federal Government. The District continues to be the location of choice for many professional associations, trade associations, and major law/accounting firms in order to enjoy proximity to major Federal Government agencies, as well as elected/appointed officials. Washington, D.C. is unique in that a substantial portion of its prime real estate is owned by the Federal Government, thus limiting its tax base.

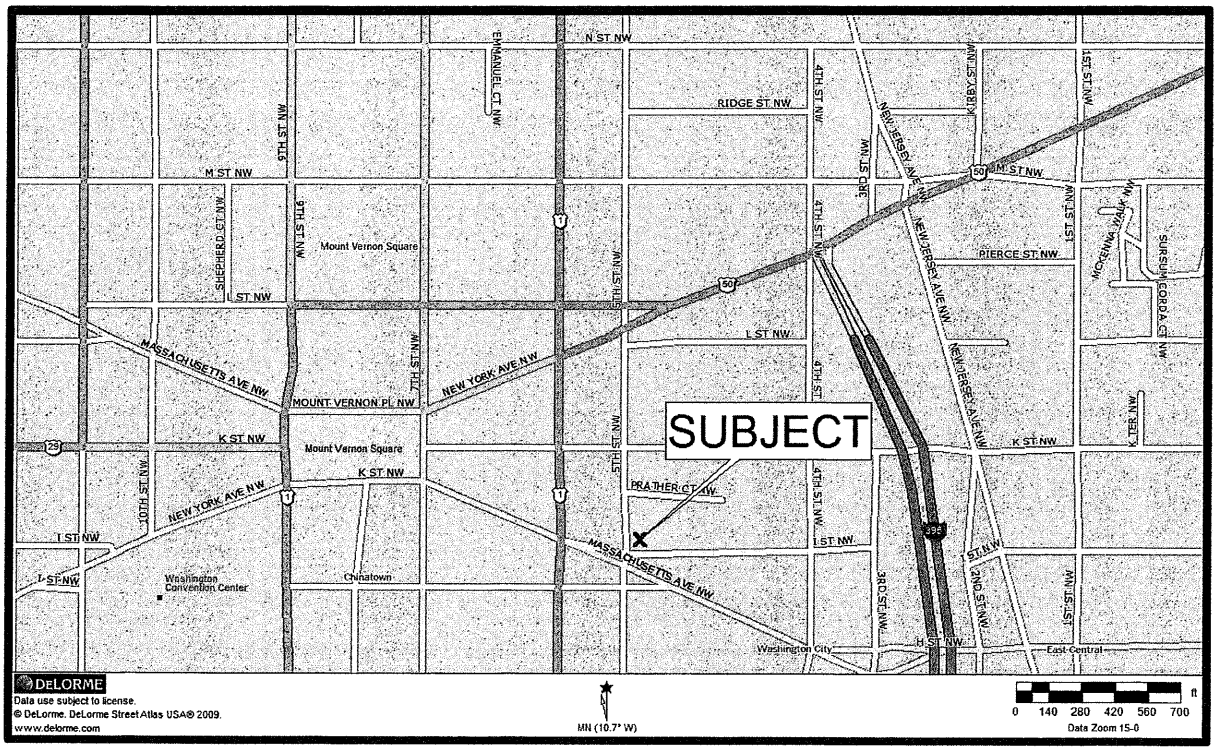
During the last two years, the District of Columbia has shown some signs of stabilization. The District experienced an increase of 2.4% in its average home sale price in 2011, after a decrease of nearly 10.0% in 2009. In 2012, the average home sale price in the District increased by 6.7% then increased again in 2013 by 7.5%. Retail sales increased in 2010 through 2013, after decreases in 2006, 2007 and 2009. Building permits increased substantially in 2011, after a decrease in 2010, and then decreased again in 2012 and 2013.

The average unemployment rate increased from 2009 through 2011, but decreased in 2012 and 2013. These recent signs of stabilization indicate the process of recovery may be beginning, however, the future outlook remains uncertain.

The District of Columbia's location at the center of the Washington MSA and its economic base will continue to be a positive influence as it recovers in the years to come. Economic growth may not again reach the pace set in the mid-2000s, however, the District's favorable demographic trends and location will assist in stabilizing its economy.

Mount Vernon Square, Washington, D.C.

The subject property is located in Northwest Washington, D.C. in a neighborhood known as Mount Vernon Square. The neighborhood is bounded by N Street, NW to the north, New Jersey Avenue, NW and 1st Street, NW to the east, Massachusetts Avenue, NW to the south, and 9th Street, NW to the west. The neighborhood includes the adjacent area known as Mount Vernon Triangle. Surrounding neighborhoods include Shaw and Truxton Circle to the north, NoMa/Sursum Corda to the east, Chinatown to the south, and Downtown to the west.



The subject property lies in Zip Code 20001, an area that generally extends south from Irving Street, NW to the National Mall and east from 11th Street, NW to North Capitol Street. Demographic information published by ESRI and the U.S. Census indicates a 2014 population in this zip code of 41,311 persons which is an increase of 7.0% over the 2010 population of 38,612 persons. A further increase of 10.2% to 45,520 persons is projected by 2019. Households increased 9.5% to 18,132 in 2014 from 16,564 in 2010 and are projected to further increase 12.2% to 20,371 by 2019. Average household size in 2014 was reported at 2.28 persons which is below the national average. Median household income for residents in this zip code in 2014 was estimated at $59,467 which is less than the median household income of $65,202 for the District of Columbia, but higher than the national median of $52,076.

The neighborhood is characterized by a mix of uses including multi-family buildings, office buildings, rowhouses, and storefront retail. Multi-family development is dominated by high-rise buildings with 200+ units developed over the last decade. Rowhouses are typically three-story

19th century Victorian dwellings that have been renovated, while retail generally consists of two- to four-story row buildings with first floor storefronts and office or vacant space on the upper floors. Office properties consist of a handful of high-rise Class A buildings over 90,000 sq.ft. and several older Class B and Class C buildings under 20,000 sq.ft. One of the most prominent features of the neighborhood is the Walter E. Washington Convention Center which sits on six city blocks and is the second largest building in the District of Columbia. Opened in 2003, the convention center contains 2.3 million sq.ft. and can host up to 42,000 attendees.

The neighborhood has seen heavy development activity, particularly of the multi-family residential variety, over recent years. The following chart summarizes recently completed projects within the neighborhood.

Property	Address	Type	Built	Size	Occupancy
Golden Rule Plaza	1050 New Jersey Avenue, NW	Senior Apartments	2003	119 units	96.6%
Hampton Inn	901 6th Street, NW	Hotel	2005	228 rooms	N/A
555 Mass	555 Massachusetts Avenue, NW	Condominiums	2006	246 units	100.0%
The Sonata	301 Massachusetts Avenue, NW	Condominiums	2006	76 units	100.0%
L at City Vista	440 L Street, NW	Condominiums	2007	149 units	100.0%
Madrigal Lofts	811 4th Street, NW	Condominiums	2007	259 units	100.0%
Mayer Mitchell Building	251 H Street, NW	Office	2007	93,880 sq.ft.	100.0%
Yale Steam Laundry	437 New York Avenue, NW	Condominiums	2008	270 units	100.0%
Gables City Vista	460 L Street, NW	Apartments	2008	244 units	98.4%
N/A	455 Massachusetts Avenue, NW	Office	2008	242,366 sq.ft.	99.4%
K at City Vista	475 K Street, NW	Condominiums	2008	292 units	100.0%
425 Mass Apartments	425 Massachusetts Avenue, NW	Apartments	2009	559 units	96.1%
Yale West	443 New York Avenue, NW	Apartments	2011	216 units	100.0%
Meridian at Mount Vernon Triangle	425 L Street, NW	Apartments	2012	390 units	100.0%
Lyrica 440K Apartments	440 K Street, NW	Apartments	2014	234 units	64.1%
AAMC Headquarters	655 K Street, NW	Office	2014	287,800 sq.ft.	81.2%
Meridian at Mount Vernon Triangle	414 New York Avenue, NW	Apartments	2014	393 units	100.0%
		Office	Total/Avg	624,046 sq.ft.	93.53%
		Multi-Family	Total/Avg	3,447 units	96.55%

Source: Costar

Additional multi-family, hospitality, and office development is under construction and planned for the neighborhood. The following chart summarizes these projects.

Property	Type	Status	Size
450 K Street, NW	Apartments	Delivering 2014	233 units
465 New York Avenue, NW	Hotel	Delivering 2015	163 rooms
460 New York Avenue, NW	Condominiums	Delivering 2015	63 units
601 Massachusetts Avenue, NW	Office	Delivering 2015	478,882 sq.ft.
443 -459 I Street, NW	Apartments	Groundbreaking 2014	174 units
1031 4th Street, NW	Apartments	Groundbreaking 2014	133 units
801 3rd Street, NW	Apartments	Groundbreaking 2016	320 units
655 New York Avenue, NW	Office	Proposed	363,069 sq.ft.
901 4th Street, NW	Office	Proposed	121,016 sq.ft.
300 K Street, NW	Office	Proposed	500,000 sq.ft.
400 K Street, NW	Office	Proposed	250,000 sq.ft.
501 K Street, NW	Office	Proposed	535,000 sq.ft.
801 New Jersey Avenue, NW	Office	Proposed	383,000 sq.ft.
	Office	Total	2,630,967 sq.ft.
	Multi-Family	Total	923 units

Source: Costar

The neighborhood has good access to major arteries (New York, Massachusetts, and New Jersey Avenues and K and 7th Streets) which provide convenient transportation within the District and connect to the surrounding metropolitan area. The neighborhood also has quick access to I-295 and I-395 via interchanges along New York Avenue and 3rd Street. The neighborhood is served by the Mount Vernon Square/7th Street-Convention Center Station with service on both the Green and Yellow Lines of the Metro. The Green Line runs from Greenbelt, Maryland through downtown D.C. and back into Maryland with final stops in Suitland and Branch Avenue. The Yellow Line runs from Fort Totten station and parallels the Green Line through downtown D.C. until after L'Enfant Plaza where it crosses into Virginia and has stops at the Pentagon, Reagan National Airport and ends at Huntington in Alexandria. The southern edge of the neighborhood is also a couple of blocks from the Gallery Place-Chinatown and Judiciary Square Metro Stations along the Red Line.

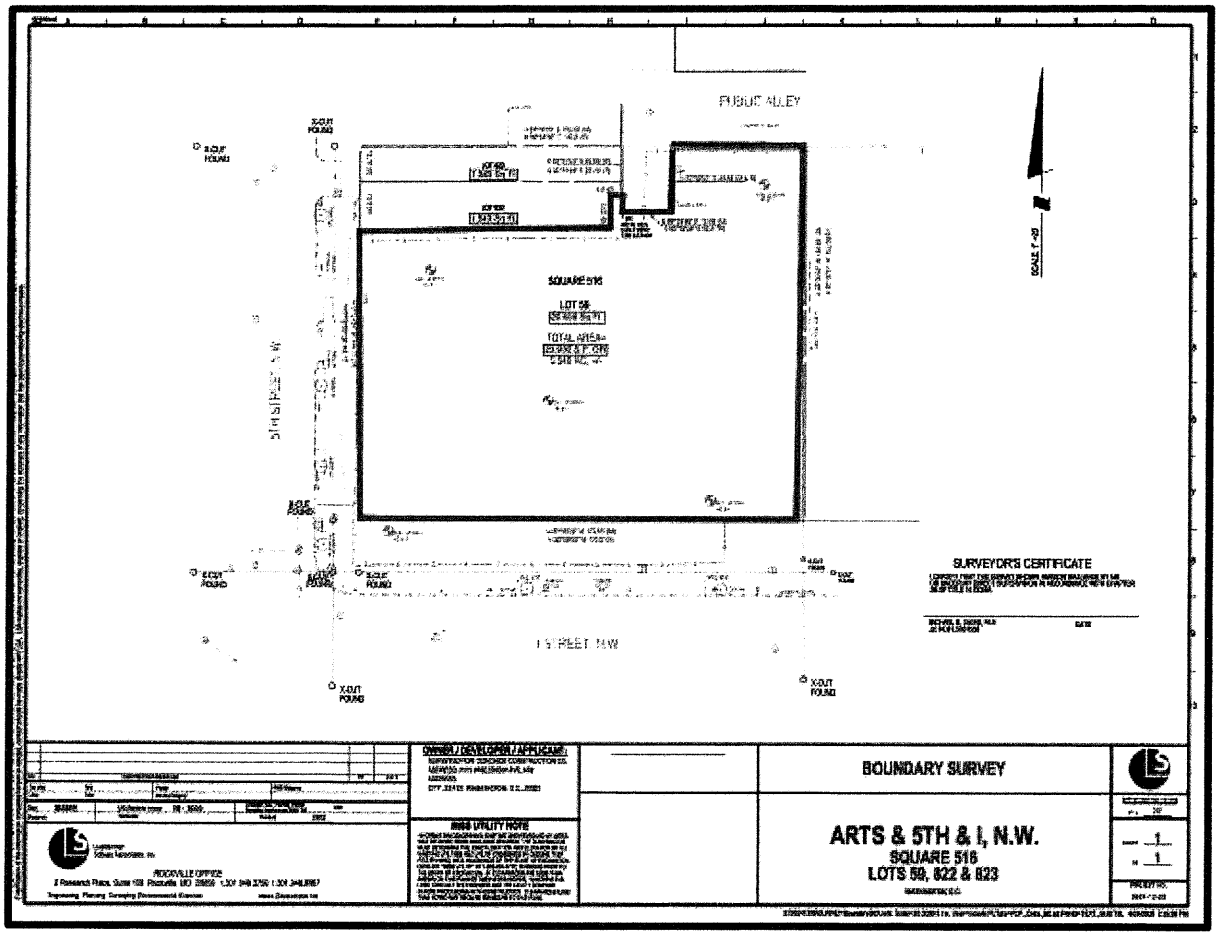
In summary, the subject property is located in the Mount Vernon Square neighborhood of Northwest Washington, D.C. The neighborhood is characterized by intense recent and ongoing multi-family, office, and hotel development activity. It is our opinion that the area will continue experience significant growth over the near future.

Subject Property

Legal Description

The subject property consists of an irregular shaped parcel of land located in the northeast quadrant of the intersection of 5th and I Streets in Northwest Washington, D.C. The parcel has a street address of 901 5th Street, NW and is identified as Lot 59 of Square 516 in the tax assessment records of the District of Columbia. The parcel is under the ownership of the District of Columbia.

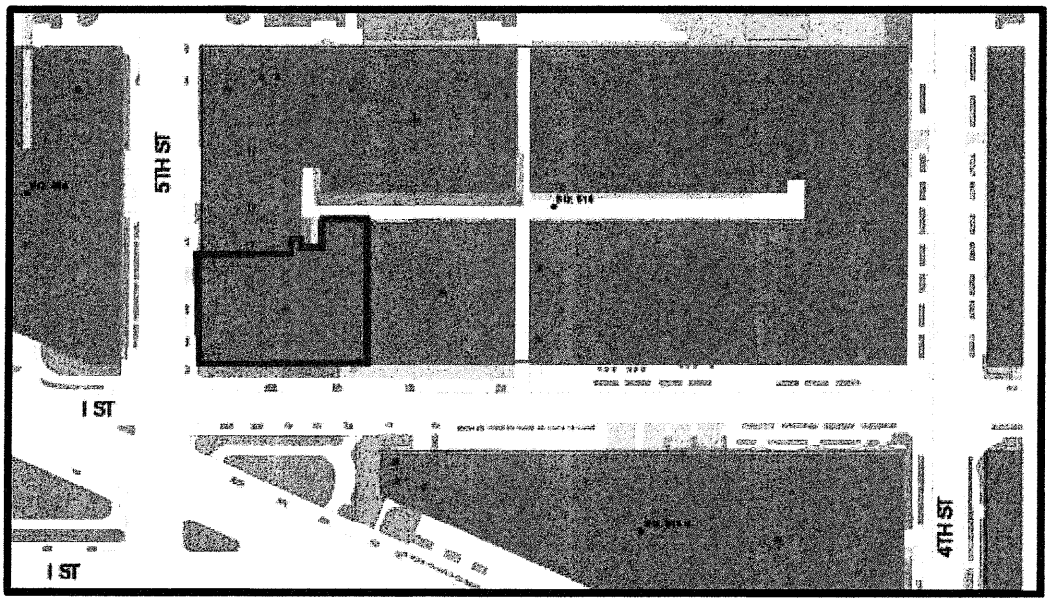
SURVEY



Property Data

The following description is based on our property inspection and assessor records.

TAX MAP



General Data

Location:	Washington, D.C.
Street Address:	501 9th Street, NW
Parcel Numbers:	Square 516, Lot 59

Adjacent Land Uses

North:	Unimproved lot and alley
South:	Pocket park
East:	Low-rise commercial buildings (future apartments)
West:	Residential condominium building

Physical Characteristics

Site Area:	20,698 sq.ft. according to survey; 20,641 sq.ft. according to tax assessment records
Shape:	Irregular
Topography:	Gently rises from boundaries to center of site
Parcel Type:	Corner lot
Frontage:	170.05 ft. along I Street, NW and 113.31 ft. along 5th Street, NW

Access

Street Name:	5th Street, NW
Street Type:	Commercial
Curb Cuts:	One

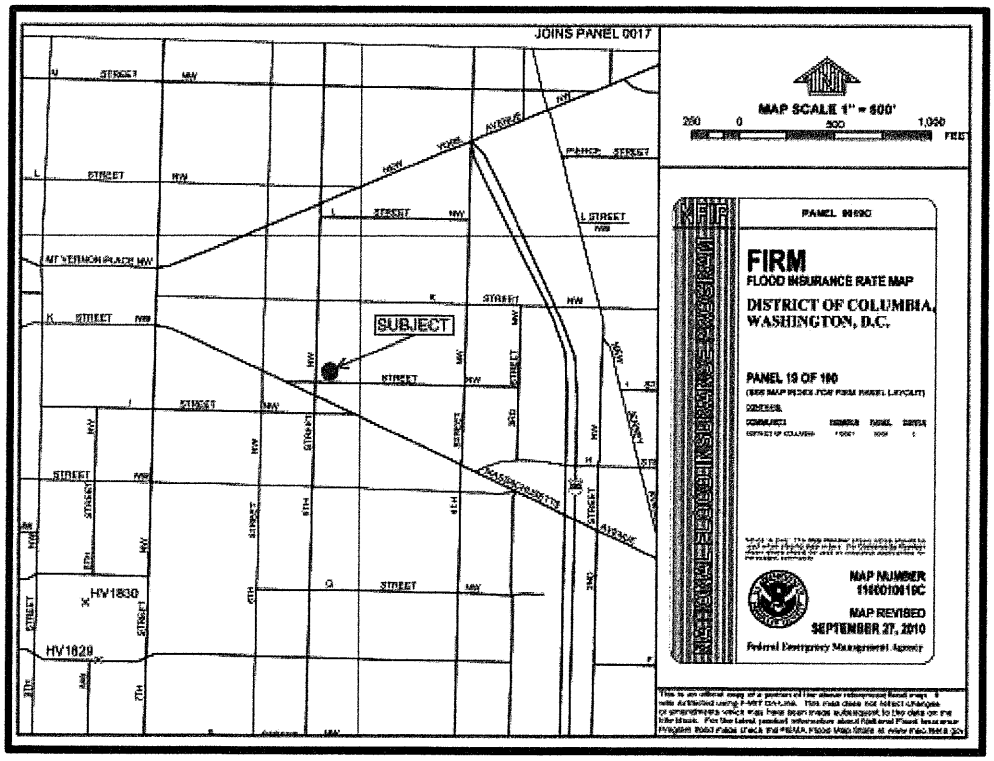
Site Improvements

Off-Site Improvements:	Brick and concrete sidewalks, curbs, gutters, and streetlights
Utilities:	Electric, gas, water, sewer, and telephone
On-Site Improvements:	Chain link fencing

Other Site Conditions

Soils:	No information provided; assumed to be adequate
Environmental Issues:	No information provided; assumed to be non-existent
Easements & Encroachments:	No information provided; assumed to not exist or have no impact on property's value
Flood Zone Data:	Located in Zone X, an area determined to be outside the 0.2% annual chance floodplain according to FIRM# 1100010019C dated September 27, 2010

FLOOD MAP



Site Ratings

Location:	Good
Size, Shape, and Topography:	Good
Access:	Good
Exposure:	Good
Site Improvements:	Average
Overall Site Rating:	Average

Analysis of Highest and Best Use As If Vacant

The Highest and Best Use As If Vacant is the reasonably probable and legal use of unimproved land that is: physically possible, appropriately supported, financially feasible, and that results in the highest value. In determining the highest and best use of the property, we focus on: 1) the existing use, 2) a projected development, 3) a subdivision, 4) an assemblage, or 5) holding the land as an investment.

Legally Permissible:

A threshold of highest and best use is what is legally permissible. This analysis considers private restrictions, existing zoning, likely zoning, building codes, historic district controls, urban renewal ordinances, and other encumbrances because they may preclude many potential uses.

LEGALLY PERMISSIBLE

Characteristic	Conclusion
Classification:	DD/C-2-C
Permitted Uses:	Office, residential, retail, hotel
Regulations:	Max. FAR – 10.5 with residential use
Probability of Change	Unlikely

Physically Possible:

Multiple factors affect the uses with which the land may be developed. These factors are considered in the following table, followed by a conclusion of the legally permissible uses that are also physically possible.

PHYSICALLY POSSIBLE

Characteristic	Conclusion
Size	20,698 sq.ft.
Shape	Irregular
Utilities	Electric, gas, water, sewer, telephone
Visibility	Good
Flood Plain	Outside flood plain
Soil Conditions	Assumed adequate
Environmental	Assumed non-existent
Physically Possible Uses	**Office, residential, retail, hotel**

Financially Feasible:

After determining the uses that are physically possible and legally permissible, an appraiser considers the uses that are likely to produce an adequate return on investment. All uses that yield a positive return are financially feasible. Feasibility is tested through a cost/benefit analysis or through direct market observation.

FINANCIALLY FEASIBLE

	Office	Residential	Retail	Hotel
Demand	Stable	Stable	Stable	Stable
Supply	Balanced	Balanced	Balanced	Balanced
Feasibility	Marginal	Strong	Strong	Marginal
Support	CoStar	CoStar	CoStar	Observation

The subject property is located in the East End section of the downtown office market. According to CoStar, the overall vacancy rate for this submarket is currently 10.5% with a five-year average of 10.2%. This level of vacancy suggests that development of the subject property with an office project would likely require significant pre-leasing to be financially feasible. The overall vacancy rate for multi-family residential in the Mount Vernon Square area is 6.8% with a 6.7% average according to CoStar. This level of vacancy suggests that further multi-family development is adequately supported; however, the 296 units scheduled for completion and 307 units breaking ground in 2014 discussed in the neighborhood analysis section raises the concern of a potential oversupply.

The overall retail vacancy rate in the neighborhood is 17.3% with a five-year average of 12.7% according to CoStar. However, almost all of this vacancy is located in five low-rise commercial buildings developed between 1900 and 1930. The overall vacancy rate for retail in buildings developed after 1930 is less than 1.0% with a five-year average of 6.6%, suggesting that more retail development is adequately supported. The subject neighborhood presently contains a single 228-room hotel with a 163-room project currently under construction. Just outside the neighborhood on the opposite side of 9th Street, NW is the Washington Marriott Marquis, a 1,175-room hotel next to the convention center. There is also a 196-room hotel two blocks south of the subject property along H Street, NW. Despite the number of rooms within the immediate area, the subject's proximity to tourist attractions, a major sporting venue, and nightlife suggests that a limited amount of additional hotel development may be adequately supported.

Maximally Productive:

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Of the four financially feasible uses, multi-family development and retail have the strongest demand. Additionally, in order to achieve the maximum permitted density of the subject, the site requires a multi-family use. Consequently, a multi-family development with first floor retail is considered the highest and best use of the subject property.

Conclusion of Highest and Best Use

The conclusion of the highest and best use, as analyzed in the previous section, is as follows:

CONCLUSION

Characteristic	Conclusion
Use:	Multi-family with first floor retail
Timing:	Current
Participants (User):	Renter or homeowner
Participants (Buyer):	Developer

Value Estimate

Sales Comparison Approach

This approach is based on the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership. It is based on the principles of supply and demand, balance, substitution and externalities. In the sales comparison approach, an opinion of market value is developed by analyzing closed sales, listings, or pending sales of properties similar to the subject property, using the most relevant units of comparison. The comparative analysis focuses on the difference between the comparable sales and the subject property using all appropriate elements of comparison.

A systematic procedure for applying the sales comparison approach includes the following steps: (1) researching and verifying transactional data, (2) selecting relevant units of comparison, (3) analyzing and adjusting the comparable sales for differences in various elements of comparison, and (4) reconciling the adjusted sales into a value indication for the subject.

Unit of Comparison

The primary unit of comparison selected depends on the appraisal problem and nature of the property. One primary unit of comparison in the market for multi-family development land is price per FAR. This unit is derived by dividing the purchase or asking price by the square footage of permitted building area.

Elements of Comparison

Elements of comparison are the characteristics or attributes of properties and transactions that cause the prices of real estate to vary. The main elements of comparison that should be considered in sales comparison analysis are as follows: (1) real property rights conveyed, (2) financing terms, (3) conditions of sale, (4) expenditures made immediately after purchase, (5) market conditions, (6) location, (7) physical characteristics, and (8) other differences.

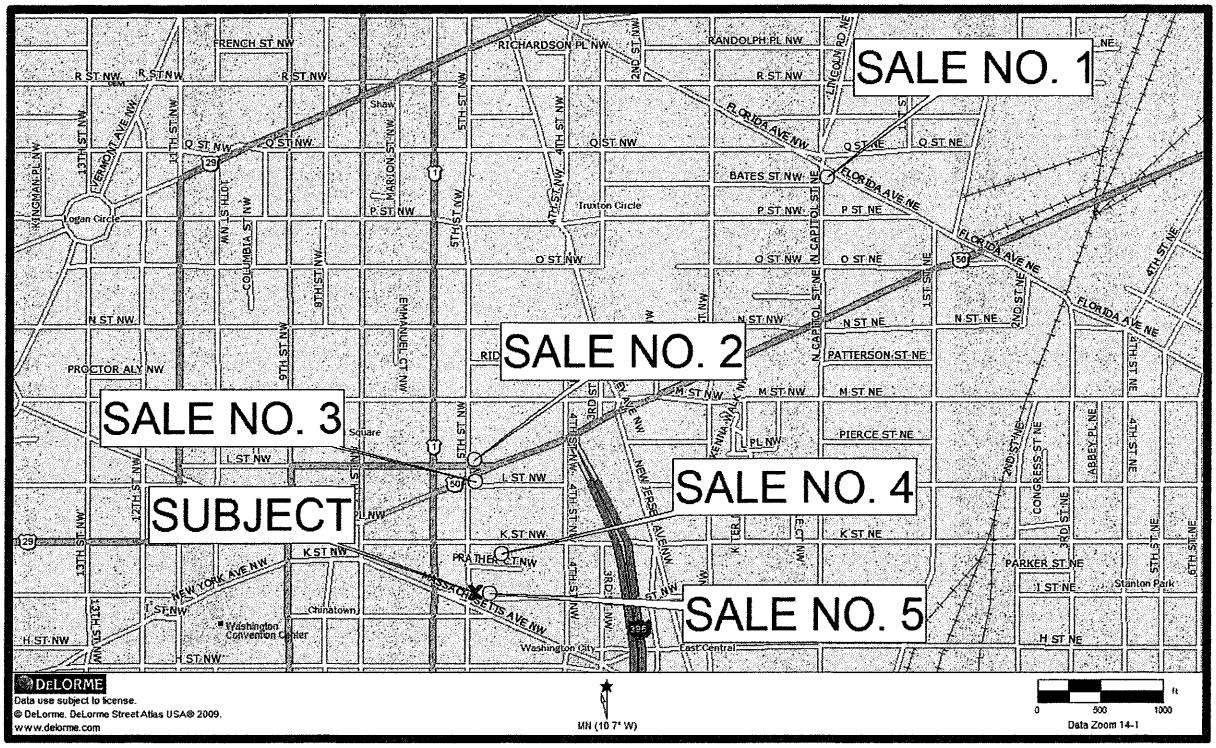
We used five sales in our analysis, as these sales are judged to be the most useful in developing an opinion of the market value of the subject property. These sales are summarized in the following table, followed by a location map. Next are our comparable sales sheets which discuss the comparables and our adjustments.

COMPARABLE SALES SUMMARY

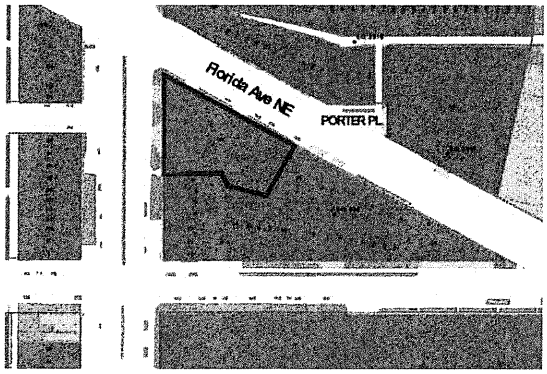
No.	Location	Date	Zoning	Sq.Ft.	Price	GBA*	Unadjusted $/FAR
1	1 Florida Avenue, NE	Aug-14	C-3-C	22,378	$11,200,000	145,457	**$77.00**
2	465 -471 New York Avenue, NW	Feb-13	DD/C-2-C	12,184	$11,300,000	127,932	**$88.33**
3	460 New York Avenue, NW	Sep-12	DD/C-2-C	6,494	$5,167,922	68,187	**$75.79**
4	450 K Street, NW	Jun-11	DD/C-2-C	20,926	$15,000,000	219,723	**$68.27**
5	443 -459 I Street, NW	Apr-11	DD/C-2-C	20,614	$12,000,000	155,000	**$77.42**

* Maximum permitted gross building area per zoning or approvals, not proposed gross building area of project

COMPARABLE SALES MAP



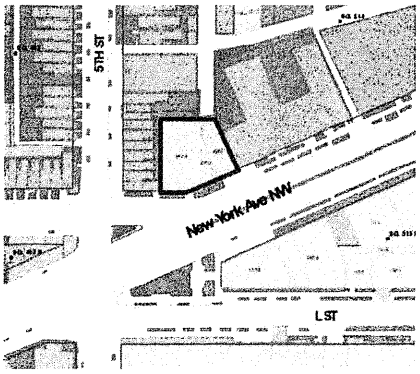
LAND SALE 1



Property Identification		Site Description	
Address	1 Florida Avenue, NE	**Land Acres**	0.51
City, State, Zip	Washington, D.C. 20002	**Usable Acres**	N/A
County	N/A	**Land Sq.Ft.**	22,378
Tax ID/APN	Square 668, Lot 91	**Zoning**	C-3-C
Property ID	106681	**Access**	Good
		Visibility	Good
		Shape	Irregular
		Topography	Generally Level
		Utilities	All available
		Site Improvements	Gas station & convenience store
Site Comments	Single parcel of land developed with a 10-pump gas station with a convenience store built in 1982.		

Transaction			
Sale Date	**08-01-2014**	**Sale Status**	Closed
Sale Price	**$11,200,000**	**Proposed Use**	Apartment and Retail
Price/Acre	**$21,801,420**	**Proposed GBA**	145,457
Price/Usable Acre	**N/A**	**Proposed Units**	N/A
Price/Sq.Ft.	**$500.49**	**FAR**	6.50
Price/Proposed GBA	**$77.00**	**Sale Conditions**	Typical
Price/Proposed Unit	**N/A**	**Days on Market**	N/A
Seller	Anacostia Realty LLC	**Confirmation Type**	CoStar/OTR
Buyer	Bethesda St. Elmo LLC	**Financing**	$10,320,000 from EagleBank
Document Number	Instr. No. 70096		
Sale Comments	Buyer reportedly purchased property for redevelopment with multi-family project with first floor retail and entered into a short-term leaseback with the seller in the interim. Based on the by-right, maximum permitted FAR of 6.5, the property can be developed with 145,457 sq.ft. of improvements. However, the property is located in the North Capitol transferrable development rights (TDR) receiving zoning and could achieve a maximum FAR of 10.0 with the purchase of TDR's.		

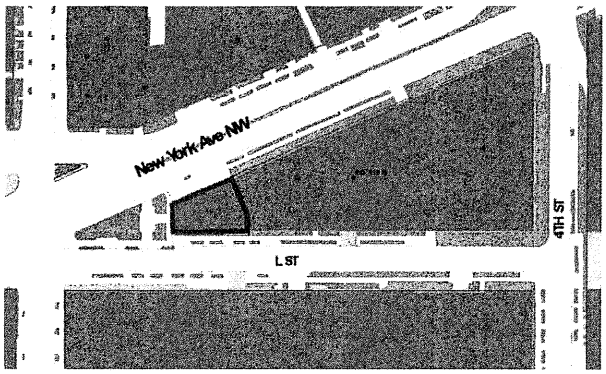
LAND SALE 2



Property Identification		Site Description	
Address	465-471 New York Avenue, NW	**Land Acres**	0.28
City, State, Zip	Washington, D.C. 20001	**Usable Acres**	N/A
County	N/A	**Land Sq.Ft.**	12,184
Tax ID/APN	Square 0514, Lots 0851, 0852, & 0864	**Zoning**	DD/C-2-C and DD/R-5B
Property ID	59276	**Access**	Average
		Visibility	Average to good
		Shape	Irregular
		Topography	Level
		Utilities	Available
		Site Improvements	Commercial buildings
Site Comments	Three contiguous parcels of land located at the intersection of New York Avenue, NW and L Street, NW. The site is improved with two small structures of no value on its easternmost portion with the remainder of the property paved.		

Transaction			
Sale Date	**02-20-2013**	**Sale Status**	Closed
Sale Price	**$7,000,000**	**Proposed Use**	Hotel
Price/Acre	**$25,026,278**	**Proposed GBA**	123,000
Price/Usable Acre	**N/A**	**Proposed Units**	N/A
Price/Sq.Ft.	**$574.52**	**FAR**	4.19
Price/Proposed GBA	**$56.91**	**Sale Conditions**	Typical
Price/Proposed Unit	**N/A**	**Days on Market**	9 years
Seller	Kressin New York Avenue LLC, DIME LLC, & Bandit LLC	**Confirmation Type**	Listing broker/CoStar
		Financing	N/A
Buyer	MHF DC IV LLC		
Document Number	Instr. No. 22818		
Sale Comments	Property placed under contract of sale in late 2011. The buyer is a national hotel owner and the property reportedly has approval for development with a 123,000 sq.ft. hotel which was obtained by the buyer. Based on a maximum permitted FAR of 10.5, the property can be developed with 127,932 sq.ft. of improvements with a residential use and bonus density.		

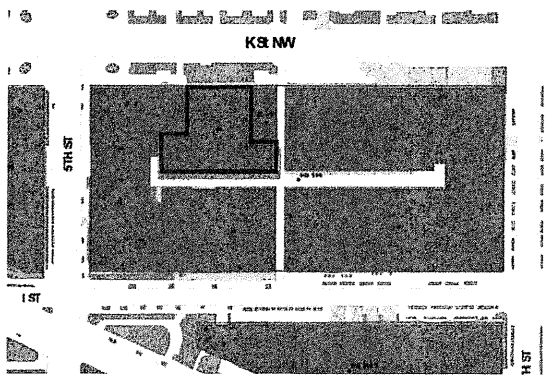
LAND SALE 3



Property Identification		Site Description	
Address	460 New York Avenue, NW	**Land Acres**	0.15
City, State, Zip	Washington, D.C. 20001	**Usable Acres**	N/A
County	Washington, DC	**Land Sq.Ft.**	6,494
Tax ID/APN	Square 515N, Lot 828	**Zoning**	DD/C-2-C
Property ID	59981	**Access**	Average
		Visibility	Good
		Shape	Irregular
		Topography	Generally Level
		Utilities	Available
		Site Improvements	Office/industrial building
Site Comments	Property is improved with a three-story office/loft industrial building developed in 1925. The building is masonry construction with a brick exterior and comprises 19,701 sq.ft. The building has been vacant for several years and is in poor to fair condition.		

Transaction			
Sale Date	**09-27-2012**	**Sale Status**	Closed
Sale Price	**$5,167,922**	**Proposed Use**	Residential condominium
Price/Acre	**$34,664,963**	**Proposed GBA**	66,537
Price/Usable Acre	**N/A**	**Proposed Units**	63
Price/Sq.Ft.	**$795.80**	**FAR**	10.25
Price/Proposed GBA	**$77.67**	**Sale Conditions**	See Remarks
Price/Proposed Unit	**$82,031**	**Days on Market**	9.5 years
Seller	Kressin South New York Avenue LLC, Bandit LLC & DIME LLC	**Confirmation Type**	Contract of Sale
		Financing	Loan from EagleBank
Buyer	BA New York Avenue LLC		
Document Number	Instr. No. 106187		
Sale Comments	The property was purchased for redevelopment with an 11-story, 63-unit, condominium building totaling 66,537 gross sq.ft. The building will be comprised of three levels within the shell of the existing structure, one basement level, seven additional floors of residential space, and a top floor with amenity space. The shell of the existing building is incorporated in the development because it exceeds the current required minimum setbacks allowing a larger footprint for the new development. However, the developer considered this benefit offset by the cost of stabilizing the existing improvements to support the new development. The total consideration consisted of $500,000 to the seller at closing plus $167,922 for property taxes and expenses from October 9, 2008 to July 31, 2011 as well as a promissory note to pay $2,000,000 by December 31, 2015 along with a contingency payment based on net proceeds (after development costs and 25% returns to investors) from sales of condominium units not to exceed $2,500,000. Assuming a 10.5 maximum FAR, the property could have been developed with 68,187 sq.ft. of improvements.		

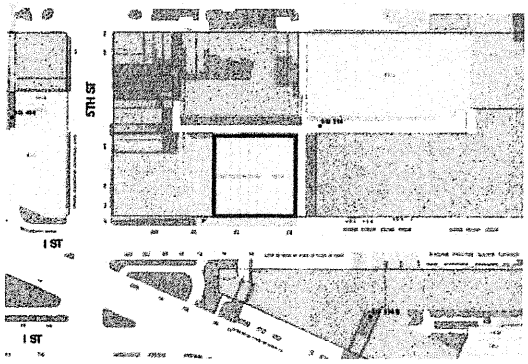
LAND SALE 4



Property Identification		Site Description	
Address	450 K Street, NW	**Land Acres**	0.48
City, State, Zip	Washington, D.C. 20001	**Usable Acres**	N/A
County	N/A	**Land Sq.Ft.**	20,926
Tax ID/APN	Square 0516, Lot 0061	**Zoning**	DD/C-2-C
Property ID	59280	**Access**	Average
		Visibility	Average
		Shape	Irregular
		Topography	Generally Level
		Utilities	All available
		Site Improvements	None
Site Comments	This property is located on the south side of K Street in the middle of the block between 4th and 5th Streets in Northwest Washington. At date of sale, the site was level and asphalt paved providing surface parking. The site has an estimated 122 ft. of frontage on the south side of K Street and a depth of approximately 170 feet to its border with an alley in the middle of the block.		

Transaction			
Sale Date	**06-01-2011**	**Sale Status**	Closed
Sale Price	**$15,000,000**	**Proposed Use**	Apartments
Price/Acre	**$31,224,305**	**Proposed GBA**	219,723
Price/Usable Acre	**N/A**	**Proposed Units**	233
Price/Sq.Ft.	**$716.81**	**FAR**	10.50
Price/Proposed GBA	**$68.27**	**Sale Conditions**	Typical
Price/Proposed Unit	**$64,378**	**Days on Market**	N/A
Seller	Jemal's K Street Lot LLC	**Confirmation Type**	Representative of Grantee
Buyer	450 K LLC	**Financing**	All cash sale
Document Number	Instr. No. 68637		
Sale Comments	This property is located in the Mt. Vernon Triangle neighborhood and is proposed for development with a 13 story apartment building. The building is to contain 233 apartments, of which 85% will be studios with about 675 sq.ft. each. The building is also to contain 7,000 sq.ft. of ground floor retail space. The project will include a courtyard and a rooftop common area. The grantee, Kettler, was previously a development partner in the project who then acquired this property from Douglas Development Corporation. This property had most development approvals in place at date of sale and had been under contract since October 2010.		

LAND SALE 5



Property Identification		Site Description	
Address	443 -459 I Street, NW	**Land Acres**	0.47
City, State, Zip	Washington, D.C. 20001	**Usable Acres**	N/A
County	N/A	**Land Sq.Ft.**	20,614
Tax ID/APN	Square 516, Lots 812 -815	**Zoning**	DD/C-2-C
Property ID	59553	**Access**	Average
		Visibility	Average
		Shape	Roughly Rectangular
		Topography	Generally Level
		Utilities	Available
		Site Improvements	Various structures
Site Comments	Five contiguous parcels of land located on the north side of I Street, NW between 4th and 5th Streets, NW. The parcels are improved with a two-story industrial building totaling 19,000 sq.ft. built in 1915, a single-story retail building totaling 8,503 sq.ft. built in 1949, a three-story office building totaling 3,090 sq.ft., and a three-story dwelling totaling 2,280 sq.ft. both built in the 1880's.		

Transaction			
Sale Date	**04-27-2011**	**Sale Status**	Closed
Sale Price	**$12,000,000**	**Proposed Use**	Apartments
Price/Acre	**$25,357,541**	**Proposed GBA**	173,225
Price/Usable Acre	**N/A**	**Proposed Units**	174
Price/Sq.Ft.	**$582.13**	**FAR**	8.40
Price/Proposed GBA	**$69.27**	**Sale Conditions**	Typical
Price/Proposed Unit	**$68,966**	**Days on Market**	6.8 years
Seller	WSD-459 Eye Street LLC, India Co. & Eye Street Assoc.	**Confirmation Type**	Listing Broker/CoStar/Published Reports
Buyer	EQR-Eye Street LLC	**Financing**	N/A
Document Number	Instr. No. 49310 -12		
Sale Comments	The property was purchased for redevelopment with an 11-story apartment building totaling 173,225 sq.ft. with 174 units, 2,300 sq.ft. of retail, and four levels of underground parking. The industrial building, office, and dwelling are designated as historic and will be incorporated into the new development. One of the sellers in this transaction is Walnut Street Development who had approvals to develop the site with a 162-unit residential project totaling 155,000 sq.ft. at date of sale which equates to a unit price of $77.42/FAR.		

Sales Comparison Analysis

The sales were analyzed and adjustments made for differences in the elements of comparison listed above. The comparable sales are adjusted to the subject: if the comparable sale was superior to the subject, a negative adjustment was applied to the comparable sale. A positive adjustment to the comparable property applied if it was inferior to the subject. A summary of the elements of comparison follow.

Transaction Adjustments

Transaction adjustments include 1) real property rights conveyed, 2) financing terms, 3) conditions of sale, 4) market conditions. These items are applied prior to the application of property adjustments, and are discussed as follows:

Real Property Rights Conveyed

Before a comparable sale property can be used in the Sales Comparison Approach, we must first ensure that the sale price of the comparable property applies to property rights that are similar to those being appraised. In the case of the subject property, a fee simple interest is being appraised. All of the sales should reflect a similar interest or an adjustment would be required for this element of comparison.

No adjustment is made for property rights conveyed.

Financing Terms

The transaction price of one property may differ from that of an identical property due to different financial arrangements. All of the sales used should involve typical market terms by which the sellers received cash or its equivalent and the buyers tendered typical down payments and obtained conventional financing at market terms for the balance. If otherwise, an adjustment would be required for this element of comparison.

No adjustment is made for financing terms.

Conditions of Sale

When the conditions of sale are atypical, the result may be a price that is higher or lower than that of a normal transaction. Adjustments for conditions of sale usually reflect the motivations of either a buyer or a seller who is under duress to complete the transaction. Another more typical condition of sale involves the downward adjustment required to a comparable property's for-sale listing price which usually reflects the upper limit of value. All of the comparable sales should involve typical conditions for closed transactions, or an adjustment would be required for this element of comparison.

No adjustment is made for condition of sale.

Expenditures Made Immediately After Purchase

A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the price the buyer agrees to pay. Such expenditures may include: (1) costs to cure deferred maintenance, (2) costs to demolish and remove any portion of the improvements, (3) costs to petition for a zoning change, and/or (4) costs to remediate

environmental contamination. The relevant figure is not the actual cost incurred, but the cost that was anticipated by both the buyer and seller. Unless the sales involved expenditures made immediately after purchase; no adjustments to the comparable sales are required for this element of comparison.

No adjustment is made for expenditures after purchase.

Market Conditions

Market conditions may change between the time of sale of a comparable property and the date of the appraisal of the subject property. Changes in market conditions may be caused by inflation, deflation, fluctuations in supply and demand, or other factors. Market conditions that change over time create the need for an adjustment. If market conditions have changed, an adjustment would be required for this element of comparison.

Overall economic conditions have improved and capitalization rates for multi-family sales have declined since 2011, suggesting upward adjustment to Comparable Sale Nos. 4 and 5. However, information from CoStar indicates that rental rates in the Mount Vernon Square neighborhood have declined since reaching a peak in 2011 due to an abundance of new units, suggesting a downward adjustment to Comparable Sale Nos. 4 and 5. Consequently, it is our opinion that the two adjustments offset.

Property Adjustments

Property adjustments are usually expressed qualitatively as percentages that reflect the increase or decrease in value attributable to the various characteristics of the property. These adjustments are applied after the application of transaction adjustments, and are discussed as follows:

Locational Characteristics

Location adjustments may be required when the locational characteristics of a comparable property are different from those of the subject property. These include, but are not limited to, general neighborhood characteristics, freeway accessibility, street exposure, corner versus interior lot location, neighboring properties, view amenities, and other factors.

Comparable Sale Nos. 1 is adjusted upward for its inferior location outside of the downtown area and Comparable Sale Nos. 4 and 5 are adjusted upward for their interior lot locations.

Physical Characteristics

If the physical characteristics of a comparable property and the subject property differ, each of the differences may require comparison and adjustment to the comparable. The most notable physical differences for comparable sales in this market include size, shape, and topography.

No adjustment is made for physical characteristics.

Other

Aside from locational and physical characteristics, there are numerous other points of differences between properties that may have an impact on their value.

Comparable Sale No. 4 is adjusted downward for the approvals in place at date of sale. Comparable Sale No. 5 is adjusted downward for the approvals in place at date of sale and upward for the historic structures that have to be incorporated into the development with the two adjustments offsetting.

Summary of Adjustments

Based on the preceding comparative analysis, adjustments to the comparable sales are summarized on the following table. These adjustments are based on our best judgment and experience in the appraisal of similar properties.

SUMMARY OF SALES AND ADJUSTMENTS

No.	Location	Date	Zoning	Sq.Ft.	Price	GBA	Unadj. $/FAR	Trans. Adj.	Trans. Adj. $/FAR	Location	Phys'l Chars.	Other	Composite Adjustment	Adj. $/FAR
1	1 Florida Avenue, NE	Aug-14	C-3-C	22,378	$11,200,000	145,457	$77.00	0.0%	$77.00	10.0%	0.0%	0.0%	10.0%	$84.70
2	465 -471 New York Avenue, NW	Feb-13	DD/C-2-C	12,184	$11,300,000	127,932	$88.33	0.0%	$88.33	0.0%	0.0%	0.0%	0.0%	$88.33
3	460 New York Avenue, NW	Sep-12	DD/C-2-C	6,494	$5,167,922	68,187	$75.79	0.0%	$75.79	0.0%	0.0%	0.0%	0.0%	$75.79
4	450 K Street, NW	Jun-11	DD/C-2-C	20,926	$15,000,000	219,723	$68.27	0.0%	$68.27	5.0%	0.0%	-5.0%	0.0%	$68.27
5	443 -459 I Street, NW	Apr-11	DD/C-2-C	20,614	$12,000,000	155,000	$77.42	0.0%	$77.42	5.0%	0.0%	0.0%	5.0%	$81.29
							$68.27						Min.	$68.27
S	901 5th Street, NW	Nov-14	DD/C-2-C	20,698		217,329	$88.33						Max.	$88.33
							$77.36						Avg.	$79.68

The adjusted unit prices suggest a value range of $68.27/FAR to $88.33/FAR. Four of the five sales indicate a range of $75.79/FAR to $88.33/FAR. Comparable Sale Nos. 1 and 2 are the most recent transactions and indicate a range of $84.70/FAR to $88.33/FAR while Comparable Sale Nos. 4 and 5 are located on the same block as the subject and indicate a range of $68.27/FAR to $81.29/FAR. Based on an analysis of the comparable sales, a unit value of $80.00/FAR is estimated. Applying this unit value to the subject property's permitted 217,329 sq.ft. of improvements (10.5 FAR) results in a market value indication of $17,390,000, rounded.

Correlation & Final Value Estimate

Summary of Value Conclusions

The indicated values from the sale comparison approach and our concluded market value for the subject property are summarized in the following table.

VALUE INDICATION & CONCLUDED VALUE

	As Is
Cost Approach	N/A
Sales Comparison Approach	$17,390,000
Income Capitalizaiton Approach	N/A
Market Value Conclusion	**$17,390,000**

The value of the subject property was estimated in its "As Is"/"By Right" condition assuming current real estate market conditions and maximizing development potential under existing zoning. The value of the subject site was derived by analyzing sales of similarly-zoned land in Washington, D.C. The physical unit of comparison used as the basis for this value analysis was price paid per square foot of permitted improvements (FAR).

General Exhibits & Addenda

Glossary

Definitions are taken from the Dictionary of Real Estate Appraisal, 5th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP) and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management; often a long-term lease to a credit tenant. (Dictionary)

Additional Rent

Any amounts due under a lease that is in addition to base rent. Most common form is operating expense increases. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically though scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Dictionary)

Base (Shell) Building

The existing shell condition of a building prior to the installation of tenant improvements. This condition varies from building to building, landlord to landlord, and generally involves the level of finish above the ceiling grid. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

The areas of the building that provide services to building tenants but which are not included in the rentable area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building

Common areas are; floor common areas, parking spaces, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Certificate of Occupancy (COO)

A statement issued by a local government verifying that a newly constructed building is in compliance with all codes and may be occupied.

Common Area (Public) Factor

In a lease, the common area (public) factor is the multiplier to a tenant's useable space that accounts for the tenant's proportionate share of the common area (restrooms, elevator lobby, mechanical rooms, etc.). The public factor is usually expressed as a percentage and ranges from a low of 5% for a full tenant to as high as 15% or more for a multi-tenant floor. Subtracting one (1) from the quotient of the rentable area divided by the useable area yields the load (public) factor. At times confused with the "loss factor" which is the total rentable area of the full floor less the useable area divided by the rentable area. (BOMA)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property.

CAM can be a line-item expense for a group of items that can include maintenance of the parking lot and landscaped areas and sometimes the exterior walls of the buildings. CAM can refer to all operating expenses.

CAM can refer to the reimbursement by the tenant to the landlord for all expenses reimbursable under the lease. Sometimes reimbursements have what is called an administrative load. An example would be a 15% addition to total operating expenses, which are then prorated

among tenants. The administrative load, also called an administrative and marketing fee, can be a substitute for or an addition to a management fee. (Dictionary)

Condominium

A form of ownership in which each owner possesses the exclusive right to use and occupy an allotted unit plus an undivided interest in common areas.

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real property restricting future land use to preservation, conservation, wildlife habitat, or some combination of those use. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature to continue, subject to the easement. In some locations, a conservation easement may be referred to as a conservation restriction. (Dictionary)

Contributory Value

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service (DCR = NOI/Im), which measures the relative ability to a property to meet its debt service out of net operating income. Also called Debt Service Coverage Ratio (DSCR). A larger DCR indicates a greater ability for a property to withstand a downturn in revenue, providing an imp[roved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

1) In appraising, the loss in a property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date. 2) In accounting, an allowance made against the loss in value of an asset for a defined purpose and computed using a specified method. (Dictionary)

Disposition Value

The most probable price that a specified interest in real property is likely to bring under the following conditions:

- Consummation of a sale within a exposure time specified by the client;
- The property is subjected to market conditions prevailing as of the date of valuation;
- Both the buyer and seller are acting prudently and knowledgeably;
- The seller is under compulsion to sell;
- The buyer is typically motivated;
- Both parties are acting in what they consider to be their best interests;
- An adequate marketing effort will be made during the exposure time specified by the client;
- Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

1) The date at which the analyses, opinions, and advice in an appraisal, review, or consulting service apply. 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Rent

The rental rate net of financial concessions such as periods of no rent during the lease term and above- or below-market tenant improvements (TI's). (Dictionary)

EPDM

Ethylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called an expense recovery clause or stop clause. (Dictionary)

Estoppel Certificate

A statement of material factors or conditions of which another person can rely because it cannot be denied at a later date. In real estate, a buyer of rental property

typically requests estoppel certificates from existing tenants. Sometimes referred to as an estoppel letter. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing improvement. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land may have the potential to be sold separately and is valued separately. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying any operating expenses above a stated level or amount. (Dictionary)

Exposure Time

1) The time a property remains on the market. 2) The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

Areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a full service lease. (Dictionary)

Going Concern Value

- The market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the market value of the going concern.
- The value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value when it exists and is recognizable. (Dictionary)

Gross Building Area

The total constructed area of a building. It is generally not used for leasing purposes (BOMA)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50% or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of the same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expense in income-producing properties when less than 100% occupancy is assumed. The gross up method approximates the actual expense of providing services to the rentable area of a building given a specified rate of occupancy. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning. A general term encompassing any system designed to heat and cool a building in its entirety.

Highest & Best Use

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that

results in the highest value. The four criteria the highest and best use must meet are 1) legal permissibility, 2) physical possibility, 3) financial feasibility, and 4) maximally profitability. Alternatively, the probable use of land or improved property-specific with respect to the user and timing of the use–that is adequately supported and results in the highest present value. (Dictionary)

Hypothetical Condition

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Industrial Gross Lease

A lease of industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance and real estate taxes as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Dictionary)

(Typically this includes replacement cost less basement excavation, foundation, underground piping and architect's fees).

Investment Value

The value of a property interest to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position as he or she would be if the property had not been taken. (Dictionary)

Leased Fee Interest

A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship (i.e., a lease). (Dictionary)

Leasehold Interest

The tenant's possessory interest created by a lease. (Dictionary)

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in real property should bring under the following conditions:

- Consummation of a sale within a short period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The amount of money borrowed in relation to the total market value of a property. Expressed as a percentage of the loan amount divided by the property value. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Value

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

a. Buyer and seller are typically motivated;

b. Both parties are well informed or well advised, and acting in what they consider their own best interests;

c. A reasonable time is allowed for exposure in the open market;

d. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement including permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TI's). (Dictionary)

Market Value As If Complete

Market value as if complete means the market value of the property with all proposed construction, conversion or rehabilitation hypothetically completed or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants.

Market Value As If Stabilized

Market value as if stabilized means the market value of the property at a current point and time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of the appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time). (Dictionary)

Master Lease

A lease in which the fee owners leases a part or the entire property to a single entity (the master lease) in return for a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense responsibility must always be specified. In some markets, a modified gross lease may be called a double net lease, net net lease, partial net lease, or semi-gross lease. (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the optionee) to buy, sell, or lease real property for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole (a fractional interest). (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real estate taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Prospective Future Value Upon Completion

Market value "upon completion" is a prospective future value estimate of a property at a point in time when all of its improvements are fully completed. It assumes all proposed construction, conversion, or rehabilitation is hypothetically complete as of a future date when such

effort is projected to occur. The projected completion date and the value estimate must reflect the market value of the property in its projected condition, i.e., completely vacant or partially occupied. The cash flow must reflect lease-up costs, required tenant improvements and leasing commissions on all areas not leased and occupied.

Prospective Future Value Upon Stabilization

Market value "upon stabilization" is a prospective future value estimate of a property at a point in time when stabilized occupancy has been achieved. The projected stabilization date and the value estimate must reflect the absorption period required to achieve stabilization. In addition, the cash flows must reflect lease-up costs, required tenant improvements and leasing commissions on all unleased areas.

Replacement Cost

The estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the original lessee when the property is subleased to another party; a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee (i.e., the tenant) leases part or all of the property to another party and thereby becomes a lessor. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Substantial Completion

Generally used in reference to the construction of tenant improvements (TI's). The tenant's premises are typically deemed to be substantially completed when all of the TI's for the premises have been completed in accordance with the plans and specifications previously approved by the tenant. Sometimes used to define the commencement date of a lease.

Surplus Land

Land that is not currently needed to support the existing improvement but cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

Triple Net (Net Net Net) Lease

A lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management. Also called NNN, triple net leases, or fully net lease. (Dictionary)

(The market definition of a triple net leases varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area or building common area on a floor. The total of all the usable areas or a floor shall equal floor usable area of that same floor. The amount of floor usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

Qualifications of Ryland L. Mitchell III, CRE, MAI

Senior Managing Director
Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC

Independent Valuations for a Variable World

State Certifications

State of Maryland
Commonwealth of Virginia
District of Columbia

Education

Bachelor of Science Degree in Business Administration, University of Richmond, 1965
Graduate School majoring in Real Estate, University of Florida, 1969-70

Contact Details

410-423-2364 (p)
410-423-2365 (f)

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Columbia, MD 21045

rmitchell@valbridge.com
www.valbridge.com

Membership/Affiliations
Member (CRE): American Society of Real Estate Counselors
Member (MAI): Appraisal Institute
Certified General Real Estate Appraiser: State of Maryland
Certified General Real Property Appraiser: District of Columbia
Certified General Real Estate Appraiser: Commonwealth of Virginia

Appraisal Institute & Related Courses
Uniform Standards of Professional Practice, Litigation Valuation, Capitalization Theory & Techniques, Business Practices and Ethics, Complex Litigation Appraisal Case Studies, The Appraiser as an Expert Witness: Preplation & Testimony

Background
McCurdy-Lipman & Associates (1970-77)
Lipman Frizzell & Mitchell LLC (1977 to 2013)
Valbridge | Lipman Frizzell & Mitchell LLC (2013 to present)
Actively engaged in appraising since 1970 and counseling since 1977

Teaching
Instructor: for basic Real Estate Appraisal Course, University of Baltimore, 1976-80
Instructor: for Maryland Assessment Officers School, 1977-86
Instructor: for GRI Courses of Maryland Association of Realtors, 1978-86
Instructor: for AIREA Condemnation/Litigation Course in Baltimore, Maryland, 1979-80 and at American University, 1983
Instructor: for AIREA Course entitled "Real Estate Appraisal Principles" at University of Minnesota, 1980 and at American University, 1981-90 and 1993-94

Expert Witness
U.S. District Court of Maryland
Federal Bankruptcy Court
Maryland Tax Court
Superior Court of the District of Columbia
Circuit Court in various Maryland Counties

Competency
Assignments include counseling and valuation of commercial, industrial, residential and special purpose properties, as well as unimproved land; real estate tax assessment analysis; condemnation and litigation support primarily in the State of Maryland, Commonwealth of Virginia, and Washington, D.C. metropolitan area.

Qualifications of F. Ford Dennis, Jr.

Senior Appraiser
Valbridge Property Advisors | Lipman Frizzell & Mitchell LLC

Independent Valuations for a Variable World

State Certifications

State of Maryland

Education

Master of Business Administration
Robert H. Smith School of Business
University of Maryland, College Park

Bachelor of Arts - Economics
University of Maryland, College Park

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410-423-2344 (p)
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fdennis@valbridge.com

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Suite 140

Appraisal Institute & Related Courses:
Appraisal Institute – Analyzing Distressed Real Estate
Appraisal Institute – Business Practices and Ethics
Appraisal Institute – Advanced Income Capitalization
Appraisal Institute – Advanced Sales Comparison & Cost Approaches
Appraisal Institute – General Report Writing and Case Studies
Appraisal Institute – Appraisal Principles
Appraisal Institute – Basic Appraisal Procedures
Appraisal Institute – 7 Hour USPAP updates

Experience:

Senior Appraiser
Valbridge Property Advisors | Lipman Frizzell & Mitchell, LLC (2013-Present)

Associate Appraiser
Lipman Frizzell & Mitchell LLC (1998-2013)

Appraisal/valuation and consulting assignments include: industrial buildings; retail buildings and shopping centers; office buildings; mixed-use properties; and special purpose properties including schools and churches; net-leased assets; residential subdivisions; apartment buildings; and vacant industrial, commercial and residential land. Assignments have been concentrated in the Baltimore/Washington Metropolitan Areas, including Delaware and Northern Virginia.

Teaching/Instructor Assignments:
Guest lecturer – Colvin Institute of Real Estate Development – School of Architecture, Planning & Preservation at the University of Maryland, College Park

Information on Valbridge Property Advisors

Valbridge covers the U.S. from coast to coast, and is one of the Top 3 national commercial real estate valuation and advisory services firms based on:

- Total number of MAIs (145 on staff)
- Total number of office locations (59 across the U.S.)
- Total number of staff (600 strong)

Valbridge is owned by our local office leaders. Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.

Valbridge services all property types, including:

- Office
- Industrial
- Retail
- Apartments/multifamily/senior living
- Lodging/hospitality/recreational
- Land
- Special-purpose properties

Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk- property engagements. Specialty services include:

- Portfolio valuation
- REO/foreclosure evaluation
- Real estate market and feasibility analysis
- Property and lease comparables, including lease review
- Due diligence
- Property tax assessment and appeal-support services
- Valuations and analysis of property under eminent domain proceedings
- Valuations of property for financial reporting, including goodwill impairment, impairment or disposal of long-lived assets, fair value and leasehold valuations
- Valuation of property for insurance, estate planning and trusteeship, including fractional interest valuation for gifting and IRS purposes
- Cost segregation studies
- Litigation support, including expert witness testimony
- Business and partnership valuation and advisory services, including partial interests

Independent Valuation for a Variable World

Office Locations

Corporate Office

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925-327-1696 fax

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209,569,0451 fax

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San Ramon, CA 94583
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925-327-1696 fax

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626-744-0922 fax

Valbridge Property Advisors |
Penner & Associates
1370 N. Brea Boulevard, Ste. 255
Fullerton, CA 92835
714-449-0852 phone
714-738-4371 fax

Valbridge Property Advisors |
Ribacchi & Associates
10301 Placer Lane, Ste. 100
Sacramento, CA 95827
916-361-2509 phone
916-361-2632 fax

Colorado

Valbridge Property Advisors |
Bristol Realty Counselors
5345 Arapahoe, Ste. 7
Boulder, CO 80303
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Connecticut

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Valbridge Property Advisors |
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603 Hillcrest Street
Orlando, FL 32803
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407-839-3453 fax

Valbridge Property Advisors |
Broom, Moody, Johnson &
Grainger, Inc.
121 W. Forsyth Street, Ste. 1000
Jacksonville, FL 32202
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1100 16th Street N
St. Petersburg FL 33705
727-894-1800 phone
727-894-8916 fax

Georgia

Cantrell Miller, LLC
2675 Paces Ferry Road, Ste. 145
Atlanta, GA 30339
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1875 N. Lakewood Drive, Ste. 100
Coeur d'Alene, ID 83814
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Valbridge Property Advisors |
Mountain States Appraisal &
Consulting, Inc.
1459 Tyrell Lane, Ste. B
Boise, ID 83706
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2010 E. 38th Street, Ste. 201
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Kansas
Valbridge Property Advisors |
Shaner Appraisals, Inc.
10990 Quivira, Ste. 100
Overland Park, KS 66210
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Valbridge Property Advisors |
Allgeier Company
214 S. 8th street, Ste. 200
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Argot, Derbes, Graham, Shuffield & Tatje, Inc.
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Shreveport, LA 71105
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West Chester, OH 45069
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843-881-7532 fax

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713-467-0704 fax

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Salt Lake City, UT 84121
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757-345-070 fax

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253-564-9422 fax

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509-747-3559 fax

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Vitale Realty Advisors, LLC
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Brookfield, WI 53005
262-782-7900 phone
262-782-7590 fax

COUNCIL DRAFT

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

DISTRICT OF COLUMBIA,

TPC 5TH & I PARTNERS LLC, and MLK DC AH DEVELOPER, LLC

for the

DISPOSITION OF

901 FIFTH STREET, NW

(Square 516, Lot 59)

AND DEVELOPMENT OF

A subdivided portion of parcel known as 2100 Martin Luther King, Jr. Avenue, SE in Washington, D.C.

Dated _____, 201_

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COUNCIL DRAFT

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), is made effective for all purposes as of the _____ day of _____, 201_, between (i) **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development as successor to the National Capital Revitalization Corporation pursuant to Mayor's Order 2008-137 ("**District**"), (ii) **TPC 5TH & I PARTNERS LLC**, a District of Columbia limited liability company ("**Developer**"), and (iii) **MLK DC AH DEVELOPER, LLC**, a Delaware limited liability company ("**Affordable Housing Developer**") (individually a "**Party**" and collectively, the "**Parties**")

RECITALS:

R-1. District owns the real property at 901 Fifth Street, NW, Washington, D.C. known for tax and assessment purposes as Lot 59 in Square 516 (the "**Property**"), as further described on **Exhibit A-1** attached hereto and made a part hereof.

R-2. District desires to convey the Property to Developer to be developed in accordance with this Agreement.

R-3. The disposition of the Property to Developer was approved on _____ by the Council of the District of Columbia pursuant to the _____ _____ Approval Resolution of _____, Resolution _____ ("**Resolution**"), subject to certain terms and conditions incorporated herein.

R-4. The Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project (defined below) necessary and appropriate for a first class, urban development serving District residents and the public at large. Further, as a condition of District conveying the Property to Developer, Developer shall grant to District certain design review over the Project (defined below).

R-5. Developer's affiliate, 2100 Martin Luther King Associates Limited Partnership, a District of Columbia limited partnership ("**MLK Avenue Owner**") currently owns a parcel of land located at 2100 Martin Luther King, Jr. Avenue, SE, Washington, D.C. which Developer proposes to have subdivided into two parcels, one of which parcels will consist of currently vacant land (the "**Affordable Housing Property**"), which vacant land Developer will cause to be conveyed to Affordable Housing Developer at or prior to Closing.

R-6. Affordable Housing Developer shall develop the Affordable Housing Property, which is further described on **Exhibit A-2** attached hereto and made a part hereof, as a multi-family residential building consisting of ADUs (as hereinafter defined) in conformance with the Affordable Housing Development Plan (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged by the Parties hereto, District, Developer, and Affordable Housing Developer do hereby agree as follows, to wit:

ARTICLE 1
DEFINITIONS, INCORPORATION OF RECITALS, PREVIOUS AGREEMENTS

1.1 DEFINITIONS.

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below:

"**ADU**" means an affordable dwelling unit, developed in accordance with the Affordability Covenant on the Affordable Housing Property.

"**Affiliate**" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"**Affordability Covenant**" is that certain Affordable Housing Covenant in the form attached hereto as **Exhibit B**, to be recorded in the Land Records against the Affordable Housing Property at the Closing pursuant to Applicable Law.

"**Affordable Housing Developer**" is defined in the Recitals.

"**Affordable Housing Developer's Agents**" mean Affordable Housing Developer's agents, employees, consultants, contractors, and representatives.

"**Affordable Housing Development Plan**" means the construction of a building on the Affordable Housing Property which will contain approximately 61 ADUs that will be made available for leasing to households at 60% of AMI in accordance with the Affordable Housing Plan, Construction and Use Covenant related to the Affordable Housing Project and the Affordability Covenant, and as more particularly described in **Exhibit H-2**.

"**Affordable Housing Financing Closing**" is defined in Section 6.4.

"**Affordable Housing Financing Closing Date**" means the date on which the Affordable Housing Financing Closing occurs.

"**Affordable Housing Funding Plan**" is defined in Section 9.1.1.

"**Affordable Housing Plan**" is referenced in Section 7.4 and attached hereto as **Exhibit C**.

"**Affordable Housing Project**" means the affordable housing development that Affordable Housing Developer shall build on the Affordable Housing Property in conformance with the Affordable Housing Development Plan.

"**Affordable Housing Project Budget**" Affordable Housing Developer's budget for development and construction of the Affordable Housing Project, which shall include a cost itemization prepared by Affordable Housing Developer specifying all "hard" and "soft" costs (direct and indirect) by item, including: (i) the costs of all labor, materials, and services necessary for the construction of the Affordable Housing Project and (ii) all other expenses anticipated by Affordable Housing Developer incident to the Affordable Housing Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, as may be modified from time to time in accordance with this Agreement.

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

"**Agreement**" means this Land Disposition and Development Agreement.

"**AMI**" means the most current area median income for the Washington DC-MD-VA metropolitan statistical area designated by HUD as of the date set forth in the Affordability Covenant.

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

"**Approvals**" means all applicable jurisdictional governmental approvals that pertain to any subdivision, tax lot designations, and other approvals relating to zoning relief, land use, or historic preservation, but expressly excluding the Permits.

"**Approved Construction Drawings**" is defined in Section 4.2.1.

"**Architect**" means an architect of record, licensed to practice architecture in the District of Columbia, to be selected by Developer and Affordable Housing Developer, respectively, for the Project and the Affordable Housing Project and approved by District.

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

"**CBE Agreement**" are those certain Certified Business Enterprise Utilization and Participation Agreements, between Developers and DSLBD, governing certain obligations of Developers under D.C. Law 16-33 with respect to the projects, attached hereto as **Exhibit D**.

"**Closing**" is the consummation of the transactions involving the purchase and sale of the Property from District to Developer, as contemplated by this Agreement.

"**Closing Date**" shall mean the date on which Closing occurs and is defined in Section 6.1.1.

"**Commencement of Construction**" means the time at which Developer (or Affordable Housing Developer, as the case may be) has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property (or the Affordable Housing Property, as the case may be) equipment necessary for demolition, if any, and (iv) obtained any required Permits for demolition and sheeting and shoring, and commenced demolition, if any, upon the Property (or the Affordable Housing Property, as the case may be) pursuant to the Approved Construction Drawings. For purposes of this Agreement, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property (or the Affordable Housing Property, as the case may be) for development of the Project (or the Affordable Housing Project, as the case may be) thereon or the investigations of environmental conditions, but "Commencement of Construction" shall include any material removal of Hazardous Materials from the Property (or the Affordable Housing Property, as the case may be) by Developer (or Affordable Housing Developer, as the case may be) in anticipation of excavation for construction.

"**Community Participation Programs**" is defined in Section 4.6.2.

"**Completion of Construction**" is defined in the Construction and Use Covenant.

"**Concept Plans**" are the design plans, submitted by Developers and approved by District as of the Effective Date, which serve the purpose of establishing the general direction of the design of the Project and/or the Affordable Housing Project.

"**Construction and Use Covenant**" shall mean collectively those certain Construction and Use Covenants between District and Developers, in the forms attached hereto as **Exhibit E-1** and **Exhibit E-2**, to be recorded in the Land Records against the Property and the Affordable Housing Property, as the case may be, in connection with Closing.

"**Construction Consultant**" is defined in Section 4.7.

"**Construction Drawings**" mean the Concept Plans, the Design Development Plans and the Construction Plans and Specifications, which shall be delivered by Developers to District, and approved by District, to the extent required by, and in accordance with the standards set forth in, Article 4 of this Agreement. As used in this Agreement, the term "Construction Drawings" shall include any changes to such Construction Drawings that are made in accordance with the terms of this Agreement.

"**Construction Plans and Specifications**" mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project and/or the Affordable Housing

Project in accordance with the approved Design Development Plans and that are used to obtain Permits and detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Project and/or the Affordable Housing Project.

"**Council**" means the Council of the District of Columbia.

"**Council Term Sheet**" means the term sheet attached as **Exhibit F** executed as required by D.C. Official Code § 10-801(b-1)(2).

"**DDOE**" means the District of Columbia Department of the Environment.

"**Debt Financing**" shall mean the aggregate financing or financings to be obtained by Developers from one or more Institutional Lenders to fund the costs set forth in the Project Budget and/or the Affordable Housing Project Budget, other than any Equity Investment.

"**Deed**" means the deed conveying the Property to Developer in the form attached hereto as **Exhibit I**.

"**Deposit Letter of Credit**" is defined in Section 2.2.1.

"**Design Development Plans**" are the design plans produced after review and approval of Concept Plans that reflect refinement of the approved Concept Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include details of materials and design, including size and scale of façade elements, which are presented in detailed illustrations.

"**Developer Default**" is defined in Section 8.1.1.

"**Developers**" means Developer and Affordable Housing Developer, collectively.

"**Developer's Agents**" mean the Developer's agents, employees, consultants, contractors, and representatives.

"**Development and Completion Guaranties**" means the guaranties to be executed by Guarantors, in the form attached hereto as **Exhibit N-1** and **Exhibit N-2**, which shall bind Guarantors to develop and otherwise construct the Project or the Affordable Housing Project, as the case may be, in the manner and within the time frames required by the terms of this Agreement, the Deed and the Construction and Use Covenants, as applicable.

"**Disapproval Notice**" is defined in Section 4.2.3.

"**Disposal Plan**" is defined in Section 2.3.1(b).

"**District Default**" is defined in Section 8.1.3.

"**DOES**" is the District of Columbia Department of Employment Services.

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

"**Effective Date**" is the date first written above, provided that all Parties shall have executed and delivered this Agreement to one another by such date.

"**Environmental Laws**" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project or the Affordable Housing Project, as the case may be, in excess of any and all Debt Financing applicable thereto, including the amount of any deferred development fee due and payable to the applicable Developer, whether or not treated as a loan for tax purposes, provided such Equity Investment does not come from a Prohibited Person.

"**Final Certificate of Completion**" shall have the meaning given in the Construction and Use Covenant.

"**Final Completion**" shall have the meaning given in the Construction and Use Covenant.

"**Final Affordable Housing Budget and Funding Plan**" is defined in Section 9.1.3.

"**Final Project Budget and Funding Plan**" is defined in Section 9.1.3.

"**First Source Agreement**" are those agreements between Developers and DOES, attached hereto as **Exhibit G**, governing certain obligations of Developers regarding job creation and employment generated as a result of the Project.

"**Force Majeure**" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism,

labor strikes, unusual delays in deliveries, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as: (i) such acts are not within the reasonable control of Developer, Affordable Housing Developer, Developer's Agents or Affordable Housing Developer's Agents, or their Members; or (ii) such acts or events are not due to the fault or negligence of Developer, Affordable Housing Developer, Developer's Agents or Affordable Housing Developer's Agents, or their Members; (iii) such acts or events are not reasonably avoidable by Developer, Affordable Housing Developer, Developer's Agents or Affordable Housing Developer's Agents, or their Members or District in the event District's claim is based on a Force Majeure event, and (iv) such acts or events directly result in a delay in performance by Developer, Affordable Housing Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer's, Affordable Housing Developer's or District's financial condition; (B) changes in real estate market conditions; or (C) the acts or omissions of a general contractor, its subcontractors, or any other of Developer's Agents or Affordable Housing Developer's Agents or their Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

"**Green Building Act**" means that certain act of the District of Columbia Council enacted as *Green Building Act of 2006*, D.C. Official Code § 6-1451.01, *et seq.* (2013 Supp.), as may be amended, and the regulations promulgated therewith.

"**Guarantor**" is the Person(s) acceptable to District in its sole discretion, who will enter into a Development and Completion Guaranty with respect to the Project and the Affordable Housing Project, and any successor(s) to either of the foregoing approved by District pursuant to Section 4.5.

"**Guarantors' Submissions**" shall mean the then current audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete).

"**Hazardous Materials**" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be hazardous to the environment.

"**Hotel Program**" means the construction on the Property of a mixed-use structure of approximately 170,000 sq. ft. above grade to be used as a hotel (approximately 200 keys) and condominiums (approximately 60 units), approximately 7,600 sq. ft. of ground floor retail, and approximately 132 underground parking spaces.

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

"**Institutional Lender**" shall mean a Person that is not an Affiliate of Developer, Affordable Housing Developer or a Prohibited Person and is, at the time it first makes a loan to Developer or Affordable Housing Developer, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a "REMIC" under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees' welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1 Billion in assets; (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least $1 Billion; or (xiv) a charitable organization regularly engaged in making loans secured by real estate.

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

"**Managing Member of Developer**" means TPC 5th & I Manager LLC, the Managing Member of Developer.

"**Managing Member of Affordable Housing Developer**" means _____, the Managing Member of Affordable Housing Developer.

"**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 reduces the number of ADUs; (vi) any reduction in the level of interior finish from the Approved Construction Drawings as it relates to the ADUs; (vii) any hotel flag or hotel operator change; and (viii) 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 a direct ownership interest in either of the Developers.

"**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 and leasehold estates under the laws of the District of Columbia.

"**OAG**" means the Office of the Attorney General of the District of Columbia.

"**Other Submissions**" is defined in Section 4.6.

"**Outside Closing Date**" is defined in Section 6.1.1.

"**Park Renovation**" means Developer's renovation of Milian Park located along Massachusetts Avenue to the immediate south of the Property, and Seaton Park located across Massachusetts Avenue to the west, in accordance with the Project Development Plan and the Approved Construction Drawings.

"**Party**" when used in the singular, shall mean either District, Developer or Affordable Housing Developer; when used in the plural, shall mean both of District and either Developer or Affordable Housing Developer.

"**Permits**" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property and/or the Affordable Housing Property (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction and to operate the Project in accordance with the Project Development Plan, and the Affordable Housing Project in accordance with the Affordable Housing Development Plan, and this Agreement.

"**Permitted Exceptions**" is defined in Section 2.4.2.

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

"**Progress Meetings**" is defined in Section 4.4.

"**Prohibited Person**" shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Person suspended or debarred by HUD or by the District of Columbia government; or (F) any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"**Project**" means the development and construction of the Hotel Program on the Property and the Park Renovation in accordance with the Project Development Plan, this Agreement, the Deed, and the applicable Construction and Use Covenant.

"**Project Budget**" means Developer's budget for development and construction of the Project, which shall include a cost itemization prepared by Developer specifying all "hard" and "soft" costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, as may be modified from time to time in accordance with this Agreement.

"**Project Development Plan**" means Developer's plan for developing, constructing, financing, using, and operating the Project. As further described on **Exhibit H-1**, the Project Development Plan shall include: 1) the Hotel Program; 2) the name of the hotel flag and hotel operator; and 3) the Park Renovation.

"**Project Funding Plan**" has the meaning given it in Section 9.1.1.

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

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

"**Resubmission Period**" is a period of thirty (30) days commencing on the day after Developer or Affordable Housing Developer receives a Disapproval Notice from District, or such other period of time as District and Developer or Affordable Housing Developer may agree in writing, in their reasonable discretion. In the event either Developer or Affordable Housing 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.

"**Retail Plan**" is defined in Section 4.6.3.

"**Review Period**" is defined in Section 4.2.2.

"**ROE**" is defined in Section 2.3.1(a).

"**Schedule of Performance**" means that schedule of performance, attached hereto as **Exhibit J** and incorporated herein, and which may be amended by agreement of the applicable Parties, setting forth the timeline for design, development, construction, and completion of the Project and the Affordable Housing Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement.

"**Second Notice**" means that notice given by Developer or Affordable Housing Developer to District in accordance with Section 4.2.2 and/or Section 4.6.5 herein. 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) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION ORIGINALLY SUBMITTED ON (DATE OF DELIVERY OF SUCH SUBMISSION)]"; and (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Settlement Agent**" means the title agent selected by Developer or Affordable Housing Developer, as applicable, and reasonably acceptable to District.

"**Settlement Statement**" is the "HUD-1" or a settlement statement in similar form, prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

"**Studies**" is defined in Section 2.3.1.

"**Substantial Completion**" shall have the meaning given in the Construction and Use Covenant.

"**Transfer of Membership Interests**" is defined in Section 10.2.

"**UST Act**" is defined in Section 2.3.3.

"**UST Regulations**" is defined in Section 2.3.3.

1.2 RULES OF CONSTRUCTION.

Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

1.3 OTHER DEFINITIONS.

When used with its initial letter(s) capitalized, any term which is not defined in this Article I shall be given the definition assigned to it elsewhere in this Agreement.

1.4 RECITALS.

The Recitals are hereby incorporated by reference.

ARTICLE 2
PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE.

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer, and Developer shall purchase from District, all of District's right, title, and interest in and to the Property.

2.1.2 The purchase price of the Property is **TWENTY EIGHT MILLION DOLLARS ($28,000,000.00)** (the "**Purchase Price**"), payable at Closing.

2.1.3 Developer shall pay the Purchase Price at Closing in immediately available funds through a closing escrow established with the Settlement Agent.

2.2 DEPOSIT.

2.2.1 District hereby acknowledges receipt from Developer of a Letter of Credit in the amount of **One Hundred Thousand Dollars ($100,000.00)** (the "**Deposit Letter of Credit**"). The Deposit Letter of Credit and any replacement Letter of Credit provided under this Agreement is, or shall be, in the form attached hereto as **Exhibit O**. The Deposit Letter of Credit may be drawn by District in accordance with this Agreement.

2.2.2 The Deposit Letter of Credit is not a payment on account of and shall not be credited against the Purchase Price; rather, the Deposit Letter of Credit shall be held by District to be used as security to ensure Developer's and Affordable Housing Developer's compliance with this Agreement and may be drawn on by District in accordance with the terms of this

Agreement. Notwithstanding any provision herein to the contrary, District shall return the Deposit Letter of Credit to Developer at Closing.

2.2.3 If at any time prior to Closing, the Deposit Letter of Credit will expire within thirty (30) days, Developer shall deliver to District either a replacement Letter of Credit or an endorsement to the Deposit Letter of Credit extending the expiration date of the Deposit Letter of Credit for at least one (1) year, or to a date that is not less than thirty (30) days following the scheduled Closing Date, whichever is earlier. If a replacement Letter of Credit or endorsement is not provided to District as required pursuant to the preceding sentence by five (5) Business Days prior to the expiration date of the existing Deposit Letter of Credit, the same shall be considered a Developer Default and District may draw upon the Deposit Letter of Credit.

2.3 CONDITION OF PROPERTY.

2.3.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies on the Property using experts of its own choosing and to access the Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and no Developer Default has occurred, Developer and Developer's Agents shall continue to have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to conduct due diligence and to evaluate the Property pursuant to the terms of this Agreement and the terms and conditions of that certain Right-of-Entry, by and between Developer and District (the "**ROE**"), attached hereto as **Exhibit K** and incorporated herein, as if such terms, conditions and agreements were expressly set forth herein. The Parties hereby further agree to extend the Expiration Date (as such term is defined in the ROE) of the ROE to the Closing Date. In the event of any conflict between the terms of the ROE or the terms of this Agreement, the terms of this Agreement shall control and be paramount.

(b) In the event Developer or any of Developer's Agents disturbs, removes or discovers any materials or waste from the Property while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify District and DDOE immediately after its discovery of such Hazardous Materials. In the event such Hazardous Materials are discovered by Developer, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE no later than sixty (60) days prior to Closing. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or DDOE shall notify Developer of its findings and shall notify Developer by written notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior

to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials not already disturbed or removed until after Closing. Within seven (7) Business Days or otherwise as expeditiously as possible after the disposal of any Hazardous Materials, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials removed from the Property.

(c) Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or terminate this Agreement as a result of any Studies conducted after the Effective Date.

(d) In the event of a termination of this Agreement, 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.

(e) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders and potential investors so long as Developer directs such parties to maintain such information as confidential; and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive termination of this Agreement.

(f) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban Land. Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Official Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**") District hereby represents and warrants that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from the Property during District's ownership. Information pertaining to underground storage tanks and underground

storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 1200 First St., NE, 5th Floor, Washington, DC 20002, telephone (202) 535-2600. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION WITH ALL FAULTS AND DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 2.3.2, SECTION 2.3.3, SECTION 3.1.1 AND THE DEED (THE "REPRESENTATIONS AND WARRANTIES"), AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON EXCEPT AS SPECIFICALLY SET FORTH IN THE REPRESENTATIONS AND WARRANTIES. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE.

2.4.1 Developer hereby acknowledges that title to the Property has been investigated by Developer and is deemed acceptable, subject only to the Permitted Exceptions.

2.4.2 At Closing, District shall convey the Property "AS IS" and subject to the Permitted Exceptions. The "**Permitted Exceptions**" shall be the following collectively: (i) all title and survey matters, encumbrances or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; (v) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (vi) real property taxes and water and sewer charges or other governmental or utility assessments which are not due and payable as of Closing, subject to the obligation to pro-rate such charges and taxes on the Property as set forth in this Agreement; and (vii) licenses for temporary use of the Property, which licenses shall be terminable on thirty (30) days advance notice by District or Developer to the licensees from and after the Closing Date.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date or that would otherwise adversely impact Developer's ability to develop the Project as described in the Project Development Plan, except as expressly required by Applicable Law or as permitted by this Agreement.

2.4.4 Developer may, at or prior to Closing, notify District in writing of any adverse changes to the status of title to the Property or survey matters that occurred after the Effective Date as a direct result of action by (or the failure to act of) District. With respect to any objections to title or survey set forth in such notice, District shall have the right, but not the obligation, to cure such objections. Within ten (10) Business Days after receipt of Developer's notice of objections, District shall notify Developer in writing whether District elects to attempt to cure such objections. If District fails to timely give Developer such notice of election, then District shall be deemed to have elected not to attempt to cure such matters. If District elects to attempt to cure, District shall immediately, diligently and continuously attempt to cure such objections prior to the date of Closing to remove, satisfy or cure the same and for this purpose District shall be entitled to a reasonable adjournment of Closing if additional time is required, but in no event shall the adjournment exceed sixty (60) days after the date scheduled for Closing (and in no event later than the Outside Closing Date). If District elects not to cure any objections specified in Developer's notice, or if District is unable to effect a cure prior to Closing, or to make satisfactory arrangements with the Settlement Agent to escrow sufficient funds from the Purchase Price to effect a cure of such objections (or to cure such objections prior to any date to which Closing has been adjourned), Developer shall have the following options: (i) to accept the conveyance of the Property including any matter objected to by Developer which District is unwilling or unable to cure, in which event Developer shall be obligated to develop the Property in accordance with this Agreement, or (ii) to terminate this Agreement by sending written notice thereof to District, and upon delivery of such notice of termination, this Agreement shall terminate and the Deposit Letter of Credit shall be returned to Developer, and thereafter no Party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If District notifies (or is deemed to have notified) Developer that District does not intend to attempt to cure any objection, or if, having commenced to attempt to cure any objection, District later notifies Developer that District will be unable to effect a cure thereof, Developer shall, within ten (10) Business Days after such notice has been given, notify District in writing whether Developer shall elect to accept conveyance under clause (i) or to terminate this Agreement under clause (ii). In the event Developer does not notify District within such ten (10) Business Day period, then Developer shall be deemed to have elected to accept the conveyance under clause (i).

2.5 RISK OF LOSS.

All risk of loss prior to Closing with respect to any and all existing improvements (if any) on the Property shall be borne by District; provided in the event of a casualty, neither District nor Developer shall be required to rebuild any improvements.

2.6 CONDEMNATION.

2.6.1 Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any other competent public authority against the Property, District shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, the Deposit Letter of Credit shall be returned to Developer by District, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination. District shall have the right to any and all condemnation proceeds payable by the condemning public authority, except for the condemnation proceeds paid to Developer by the condemning public authority for its pre-development costs incurred up until the condemnation of the Property. District shall reasonably cooperate with Developer in seeking such condemnation proceeds from the condemning public authority and such obligation shall survive the termination of this Agreement.

2.6.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District shall release the Deposit Letter of Credit to Developer and District shall have the right to any and all condemnation proceeds payable by the condemning public authority. Subject to foregoing, the Parties shall be released from any further liability or obligation hereunder. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to District, such amount shall be credited against the Purchase Price payable at Closing; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District, and Developer shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to District prior to the Closing Date. In either event, District shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES; TEMPORARY LICENSEES.

Except for that certain _____, dated _____, by and between District and Franklin Parking (the "**Parking Agreement**"), District has not, and will not hereafter, procure or enter into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses,

easements, or other occupancy agreements affecting the Property that will survive Closing. Notwithstanding the above, the District may enter into licenses to third parties for temporary use of the Property, upon such terms as may be agreed by District in the exercise of its reasonable discretion, which licenses shall be terminable by District upon thirty (30) days advance notice to such licensees. Such licenses shall not contain any provisions that will survive the Closing without the approval of Developer. District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer after Closing as successor-in-interest with respect to the Property, without the prior written consent of Developer and at Closing District shall deliver the Property vacant and free and clear of the Parking Agreement and any other such licenses or other agreements.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT.

3.1.1 District hereby represents and warrants to Developers as follows:

(a) District owns the Property in fee simple, and the execution, delivery and performance of this Agreement by District and the consummation of the transactions contemplated hereby have been duly and validly authorized by the District, subject to expiration of the authority granted in the Resolution, unless extended.

(b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with its sale of the Property.

(c) There is no litigation, arbitration, administrative proceeding, condemnation or other similar proceeding pending, or to the current actual knowledge of District, threatened against District, which relates to the Property. There is no other litigation, arbitration, administrative proceeding, condemnation or other similar proceeding pending or to District's current actual knowledge, threatened against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

(d) Except as set forth on **Exhibit** __, there are no leases, license agreements, service contracts or other similar agreements encumbering or otherwise affecting the Property, and District has not entered into any agreement pursuant to which it is obligated to convey the Property to any Person other than Developer.

(e) The execution, delivery, and performance of this Agreement by District and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Applicable Law, to which District is subject, or any agreement or contract to which District is a party or to which it is subject.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for a period of six (6) months. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control, but District shall promptly notify Developers upon learning of same.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPERS.

3.2.1 Developer hereby covenants, represents, and warrants to District as follows:

(a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing, and has full power and authority under, the laws of the District of Columbia to conduct the business in which it is now engaged. Neither the Managing Member nor any Person owning directly or indirectly any interest in Developer or the Managing Member is a Prohibited Person. A full and complete set of all organizational documents of Developer and the Managing Member of Developer have heretofore been delivered to District in connection with Closing.

(b) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Developer and the Managing Member of Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of: (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Applicable Law to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.

(d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against District for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its purchase of the Property.

(e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or, to Developer's knowledge, threatened against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of Developer.

(f) Developer's acquisition of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing and operating the Project in accordance with the Project Development Plan and Construction Drawings and not for speculation in land holding.

(g) Neither Developer nor any of its Members are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

3.2.2 Representations and Warranties of Affordable Housing Developer. Affordable Housing Developer hereby makes representations and warranties to District identical to Sections 3.2.1(a) through (g) above, but with reference to Affordable Housing Developer, the Affordable Housing Property and the Affordable Housing Project.

3.2.3 Survival. The representations and warranties contained in Sections 3.2.1 and 3.2.2 shall survive Closing for a period of six (6) months. Neither Developer nor Affordable Housing Developer shall have any liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's or Affordable Housing Developer's control.

ARTICLE 4
APPROVAL OF CONSTRUCTION DRAWINGS; OTHER SUBMISSIONS; APPROVAL OF IDENTITY OF GUARANTORS

4.1 CONSTRUCTION DRAWINGS.

4.1.1 Developer's and Affordable Housing Developer's Submissions for the Project and the Affordable Housing Project. Developers shall submit to District for District's review and approval, the following drawings, plans and specifications (collectively, the "**Construction Drawings**") for the Project (or the Affordable Housing Project, as the case may be) within the timeframes set forth on the Schedule of Performance. All Construction Drawings shall be prepared and completed in accordance with this Agreement and the Development Plan for either the Project or the Affordable Housing Project, as the case may be.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to the issuance of any Permit by a District agency, Developers shall cause the Construction Drawings applicable to such Permit to become Approved Construction Drawings. All of the Construction Drawings shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect or engineer as appropriate.

(b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia, shall review and certify all final foundation and grading designs.

(c) Upon submission of all Construction Drawings to District, the Architect shall certify (with standard professional language reasonably acceptable to District) that the Project (or the Affordable Housing Project, as the case may be) has been designed in accordance with Applicable Law relating to accessibility for persons with disabilities.

4.1.3 Non-Material Changes. District and Developers recognize that, during the course of the construction of the Project and the Affordable Housing Project, changes may be necessary to the Construction Plans and Specifications for each of these projects because of unanticipated situations that are encountered or arise during construction. Accordingly, notwithstanding any provisions of this Agreement requiring District's approval of any changes or modifications to the Construction Plans and Specifications, from and after the Commencement of Construction, changes or modifications to the Construction Plans and Specifications shall not require District's approval unless such change constitutes a Material Change (in which event such Material Change shall be subject to the approval of District in accordance with the procedures set forth in Section 4.2 of this Agreement).

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS.

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings, which approval shall not be unreasonably withheld, conditioned or delayed provided such Construction Drawings are reasonably consistent with the information exchanged in Progress Meetings and are in accordance with the requirements of the terms herein and Applicable Law. Any Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Construction Drawings.**"

4.2.2. Time Period for District Review and Approval. District shall complete its review of each submission of Construction Drawings 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 (the ten (10) Business Day review period, plus any extension agreed to by the Parties, may be referred to herein as the "**Review Period**"). If District fails to respond with its written response to a submission of any Construction Drawings within the Review Period, Developer (or Affordable Housing Developer) shall 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, and shall be deemed to be, District approval of the applicable Construction Drawings.

4.2.3 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") delivered to Developer (or Affordable Housing Developer) by District shall state the basis for such disapproval in reasonably sufficient detail so as to enable Developer (or Affordable Housing Developer) to respond to District. If District issues a Disapproval Notice, Developer (or Affordable Housing Developer) shall have a period of time equal to the Resubmission Period to revise the Construction Drawing to address the obligations or comments of District and shall resubmit the amended Construction Drawing for approval by District prior to the expiration of such Resubmission Period. District shall use good faith efforts to complete its review of such amended Construction Drawing within the Review Period applicable to such resubmitted Construction Drawing, which Review Period shall commence the day following District's receipt thereof of such resubmitted Construction Drawings from Developer (or Affordable Housing Developer). If District fails to notify Developer (or Affordable Housing Developer) in writing of its approval or disapproval of such amended Construction Drawing within the Review Period,

Developer (or Affordable Housing Developer) may provide a written Second Notice to District with respect to such amended Construction Drawing, and the provisions of Section 4.2.2 shall apply with respect to such Second Notice. The provisions of this Section 4.2 relating to approval, disapproval and resubmission of any submission of Construction Drawings shall continue to apply until such Construction Drawings (and each component thereof) have been finally approved by District. In no event will District's failure to respond to any submission of Construction Drawings be deemed an approval except as otherwise expressly set forth in this Section 4.2. Any Construction Drawings may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any Construction Drawings 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 Construction Drawings that were not included or indicated on any prior Construction Drawings.

4.2.4 Submission Deadline Extensions. Subject to Force Majeure, Developer shall complete the Project, and Affordable Housing Developer shall complete the Affordable Housing Project, in accordance with the Schedule of Performance. The Schedule of Performance may be modified from time to time upon the approval of the Parties. If Developer (or Affordable Housing Developer) is proceeding diligently and in good faith and desires to extend a specified deadline for any submission of particular Construction Drawings or Other Submissions provided for in the Schedule of Performance, Developer (or Affordable Housing Developer) may request such extension in writing, and, for good cause shown, District may, in its sole and absolute discretion, grant such extension by written notice.

4.2.5 No Representation; No Liability. District's review and approval of the 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 in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of ensuring that the Construction Drawings are consistent with the Development Plan for either the Project or the Affordable Housing Project, as the applicable Development Plan is modified from time to time in accordance with the terms of this Agreement.

4.3 CHANGES IN CONSTRUCTION DRAWINGS; GOVERNMENT REQUIRED CHANGES.

4.3.1 No 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 4.3.2. If Developer (or Affordable Housing Developer) desires to make any Material Changes to the Approved Construction Drawings, Developer (or Affordable Housing Developer) shall submit in writing the proposed changes to District for approval, and the procedures set forth in Section 4.2 shall apply to District's review and approval (or disapproval) of any such proposed Material Changes in the same manner as if the submission of such proposed Material Change was the submission of the original Construction Drawings for District's review.

4.3.2 Government Required Changes. Notwithstanding any other provision of this Agreement to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Agreement) of any elements of a Construction Drawing or proposed changes 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 reasonable modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. Developers and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the applicable Construction Drawing or Approved Construction Drawing. Developers shall promptly notify District in writing of any changes required by a governmental authority whether before or during construction.

4.4 PROGRESS MEETINGS.

During the preparation of the Construction Drawings, District's staff and Developers shall hold periodic progress meetings ("**Progress Meetings**"), during which meetings Developers and designated representatives of District and other District staff shall coordinate the development and construction of the Project and the Affordable Housing Project, including preparation and submission of the Construction Drawings as well as the review of such Construction Drawings by District.

4.5 GUARANTORS; COMPLETION GUARANTY.

4.5.1 Approval of Guarantors. The Development and Completion Guaranties required pursuant to this Agreement shall be from one or more Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the applicable Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person (each, a "**Guarantor**"); provided, however, Guarantor shall not be a Prohibited Person; provided further, that any Guarantor acceptable to the applicable Institutional Lender shall be deemed acceptable to District.

4.5.2 Updated Submissions. No later than fifteen (15) days prior to Closing on the Project, or the Affordable Housing Financing Closing as the case may be, the applicable Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its sole discretion, that a material adverse change in the financial condition of the applicable Guarantor has occurred that impacts, or could threaten to impact, such Guarantor's ability to perform under the applicable Development and Completion Guaranty, Developer or Affordable Housing Developer, as the case may be, shall, within fifteen (15) Business Days after

receipt of written 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.

4.5.3 Development and Completion Guaranty. The Development and Completion Guaranties shall comply in all material respects with the terms of the form of Development and Completion Guaranties attached hereto as **Exhibit N-1** and **Exhibit N-2**.

4.5.4 Material Adverse Change in Financial Condition of Guarantor. In the event that there is material adverse change (as determined by District in the exercise of its sole and absolute discretion) in the Guarantor's financial condition from the financial condition of the Guarantor at the time of District approval of the Guarantor, Developer and/or Affordable Housing Developer, as appropriate, shall deliver a replacement guaranty from a replacement guarantor approved by District with terms and conditions consistent with this Article and within a commercially reasonable period, but in no event less than thirty (30) days.

4.6 OTHER SUBMISSIONS.

Developer or Affordable Housing Developer, as the case may be, shall submit the following to District for review and approval in District's sole but reasonable discretion ("**Other Submissions**"):

4.6.1 Development Plan. Prior to Closing or Affordable Housing Financing Closing, as the case may be, Developer or Affordable Housing Developer, as the case may be, shall submit to any proposed changes in the Project Development Plan or the Affordable Housing Development Plan, as applicable.

4.6.2 Community Participation Programs. No later than ninety (90) days after the Effective Date, Developers shall provide District a description of Developer's and Affordable Housing Developer's programs, as applicable, for public involvement, education and outreach with respect to their respective projects (including input from the community that is impacted by the applicable project as it is designed, developed, constructed and operated) (the "**Community Participation Programs**"), including a plan for implementing the Community Participation Programs and shall include, without limitation, the organization(s) with whom Developer and Affordable Housing Developer propose to discuss their respective project, a schedule for public meetings and the type of information that Developer or Affordable Housing Developer proposes to submit to the public. The Community Participation Programs shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Developer and Affordable Housing Developer shall submit such documentation of each meeting to District and shall otherwise include a summary of Developer's and Affordable Housing Developer's activities with respect to, and in furtherance of, the Community Participation Programs at each Progress Meeting. District hereby agrees that the Community Participation Programs may be maintained on Developer's and Affordable Housing Developer's website and delivered to District electronically.

4.6.3 Retail Plan. Prior to Closing, Developer shall provide District with a retail strategy and marketing plan for the development of the retail components of the Project (the "**Retail Plan**").

4.6.4 District's Approval of Professionals; Contracts.

(a) Any Person that Developer or Affordable Housing Developer proposes for any of the following shall be subject to District's approval (unless otherwise pre-approved by District under this Agreement), which approval shall not be unreasonably withheld, conditioned or delayed: (i) the Architect; (ii) the general construction contractor; and (iii) any replacement of either of the foregoing. District's review of any proposed Person under this Section 4.6.4(a) shall be limited to whether the Person (i) reasonably has the experience and technical qualifications to provide the services required, and (ii) is not a Prohibited Person.

(b) No Person that is a Prohibited Person or is debarred by HUD shall be engaged as contractor or a subcontractor or otherwise provide materials or services with respect to the Project or the Affordable Housing Project.

(c) Upon District's request, Developers shall provide to District the contracts with any Person required to be approved by District pursuant to the foregoing provisions of this Section 4.6.4.

4.6.5 Time Period for District Review and Approval of Other Submissions. District shall complete its review and approval of each Other Submission by Developers and provide a written response thereto, within ten (10) Business Days after its receipt of the same. If District fails to respond with its written response to a submission of any Other Submission within such period, Developer or Affordable Housing Developer, as applicable, shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of the District to respond to the time period set forth in the Second Notice shall constitute, and shall be deemed to be, District approval of the applicable Other Submission.

4.6.6 Changes to Other Submissions. No material adverse change or Material Change to any Other Submission shall be made without District's prior written approval. If Developers desire to make any material adverse changes or Material Changes to any Other Submission, Developer or Affordable Housing Developer, as the case may be, shall submit the proposed changes to District for approval, which approval shall be granted or withheld in District's sole but reasonable discretion. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) Business Days. If District fails to respond with its written response to a submission of any Other Submission within such period, Developer or Affordable Housing Developer, as applicable, shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of District to respond within ten (10) Business Days of District's receipt of the Second Notice shall constitute, and shall be deemed to be, District approval of the applicable Other Submission.

4.7 CONSTRUCTION CONSULTANT.

On or before the Commencement of Construction for either the Project or the Affordable Housing Project, Developer or Affordable Housing Developer, as applicable, shall appoint a construction consultant ("**Construction Consultant**"), approved by District (such approval to be deemed given if no response is provided by District within ten (10) Business Days after a request for approval is submitted to District), on such terms as District may approve (such approval to be deemed given if no response is provided by District within ten (10) Business Days after the request for approval is submitted to District): (a) to report to District on a monthly basis whether the construction of the Project or the Affordable Housing Project is in adherence to the Schedule of Performance, (b) to review and approve whether the construction of the Project or the Affordable Housing Project is consistent with the requirements of the applicable Construction and Use Covenant, and (c) to review and report to District on District's issuance of the Certificate of Final Completion (as defined in the Construction and Use Covenant). Construction Consultant shall receive timely reports from the applicable Architect, and shall promptly report any issues or problems to District and Developer or Affordable Housing Developer, as applicable. Construction Consultant shall provide such certifications as are required by the applicable Construction and Use Covenant. Construction Consultant's time, expenses, reports, and certification shall be at the sole cost and expense of Developer or Affordable Housing Developer, as applicable; provided that in no event shall such costs and expenses exceed the amount contained in the Project Budget or Final Project Budget for the Project or the Affordable Housing Project, as applicable. Any construction consultant engaged by the primary lender for supervision of construction of the applicable 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 4.7.

4.8 PAYMENT AND PERFORMANCE BONDS.

Developer and Affordable Housing Developer shall require its general contractor for the Project or Affordable Housing Project, as applicable, to obtain a payment and performance bond in form and substance acceptable to District, naming District as a named beneficiary. Developer and Affordable Housing Developer shall deliver to District an original of each such payment and performance bond prior to the Commencement of Construction for the applicable project.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE.

5.1.1 The obligations of Developer to consummate the Closing on the Closing Date shall be subject to the following conditions precedent:

(a) the representations and warranties made by District in Section 3.1.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date;

(b) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement;

(c) this Agreement shall not have been previously terminated pursuant to any provision hereof;

(d) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein;

(e) as of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes; and

(f) title to the Property shall be subject only to the Permitted Exceptions.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform in any material respect any of its obligations hereunder, Developer shall have the option, in its sole discretion, to (i) waive such condition(s) and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Deposit Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, if the failure to satisfy the condition precedent is due to a District Default, Developer may exercise its remedies in Section 8.3; or (iii) delay Closing for up thirty (30) days (or such longer time as may be agreed to by the Parties) to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but in no event later than the Outside Closing Date. District shall use good faith efforts and diligently pursue satisfaction of the conditions to Closing set forth in Section 5.1.1. The foregoing notwithstanding, but subject to Section 6.1.2 and Section 8.3, as applicable, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date because all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied, provided the same is not the result of Developer's failure to perform in any material respect any obligation of Developer hereunder, Developer may again proceed under clause (i) or (ii) above in this Section 5.1.2, in its sole discretion.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE.

5.2.1 The obligation of District to consummate the Closing on the Closing Date shall be subject to the following conditions precedent:

(a) Developer and Affordable Housing Developer shall have performed all of their material obligations hereunder and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement;

(b) the representations and warranties made by Developer and Affordable Housing Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date, and shall be updated as appropriate at Closing to reflect any changes in facts covered by such representations and warranties, and all documents heretofore delivered by Developer and Affordable Housing Developer to District in support of such representations and warranties, including, without limitation, updated and current organizational documents, shall be delivered by Developer and Affordable Housing Developer to District prior to Closing; provided that any documents in support of such representations and warranties submitted by Affordable Housing Developer to District in connection with the Affordable Housing Financing Closing need not be resubmitted to District if such documents remain true and correct in all material respects as of the Closing Date;

(c) this Agreement shall not have been previously terminated pursuant to any other provision hereof;

(d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired;

(e) the Development Plans and all Construction Drawings for the Project and the Affordable Housing Project shall have been approved as Approved Construction Drawings in their entirety pursuant to Article 4;

(f) all Other Submissions for the Project and the Affordable Housing Project shall have been approved in their entirety pursuant to Article 4;

(g) Developer shall have certified to District in writing that it is ready, willing, and able in accordance with the terms and conditions of this Agreement to purchase the Property and proceed with the development and construction of the Project in accordance with the applicable Approved Construction Drawings and the applicable Construction and Use Covenant, and Affordable Housing Developer shall have certified to District in writing on the Closing Date or on the Affordable Housing Financing Closing Date, if earlier than the Closing Date, that it is ready, willing and able in accordance with the terms and conditions of this Agreement to proceed with the development and construction of the Affordable Housing Project in accordance with the applicable Approved Construction Drawings and the applicable Construction and Use Covenant;

(h) Developer and Affordable Housing Developer shall not be in default under the terms of their respective First Source Agreements with DOES;

(i) Developer and Affordable Housing Developer shall not be in default under the terms of their respective CBE Agreements with DSLBD;

(j) Developer and Affordable Housing Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer and Affordable Housing Developer hereunder;

(k) Developer and Affordable Housing Developer shall have provided District with resolutions adopted by each of Developer and Affordable Housing Developer

authorizing the performance by Developer and Affordable Housing Developer of their respective obligations under this Agreement, including the purchase of the Property by Developer;

(l) Developer and Affordable Housing Developer shall have applied for and obtained all Approvals necessary to accomplish the Project and Affordable Housing Project;

(m) Developer shall have obtained all Permits for demolition (if any), excavation, and sheeting and shoring for the Project, and the building Permits for construction of the Project, and Affordable Housing Developer shall have obtained all Permits for the construction of the Affordable Housing Project, except for those Permits which are normally obtained during the course of construction of each project, such as elevator permits and landscaping permits;

(n) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein;

(o) Developer and Affordable Housing Developer shall have secured District's approval and shall have secured all Debt Financing and Equity Investment necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant with respect to each project, and District shall have approved all of the foregoing;

(p) there shall be no changes to the Final Project Funding Plan or the Final Project Budget, except to the extent such changes have been previously approved by District;

(q) Developer and Affordable Housing Developer shall each have executed a construction contract with its general contractor for its respective project;

(r) there shall have occurred no material adverse change in the financial condition of any Guarantor, determined in accordance with the provisions of Section 4.5 or, if a material adverse change has occurred, District has approved a substitute guarantor pursuant to Section 4.5; and

(s) the Affordable Housing Financing Closing shall have occurred, or shall occur simultaneously with the Closing; provided, however, if the Affordable Housing Financing Closing occurred prior to Closing, Affordable Housing Developer shall not be required to re-deliver to District at Closing any documents delivered to District in connection with the Affordable Housing Financing Closing, if such documents remain true and correct in all material respects as of the Closing Date.

5.2.2 Failure of Condition. Subject to Section 6.1.2, if all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, in its sole discretion, by written notice to Developers, to (i) waive such condition(s) and proceed to Closing hereunder, (ii) other than with respect to the conditions set forth in Section 5.2.1 that have not been met due to Force Majeure, terminate this Agreement and

retain the Deposit Letter of Credit, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (iii) delay Closing for up to thirty (30) days (or such longer period as may be agreed to by the Parties), to permit Developers to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied but in no event later than the Outside Closing Date. Developers shall use good faith efforts and diligently pursue satisfaction of the conditions to Closing set forth in Section 5.2.1. The foregoing notwithstanding, but subject to Section 6.1.2, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date because all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied, provided the same is not the result of District's failure to perform any obligation of District hereunder, District may again proceed under clause (i) – (ii) above in this Section 5.2.2, in its sole discretion.

ARTICLE 6
CLOSING

6.1 CLOSING DATE.

6.1.1 Closing Date and Outside Closing Date. Closing shall occur no later than the Closing Date shown on the Schedule of Performance, subject only to Force Majeure, or as otherwise expressly provided herein (the "**Closing Date**"). If any condition to Closing is not met due to Force Majeure, and there is no continuing uncured District Default or Developer Default, as applicable, under this Agreement, the Closing Date shall be extended for the period of the Force Majeure, but in no event shall the Closing Date be held after [**THE DATE THAT IS TWO (2) YEARS AFTER DATE OF COUNCIL RESOLUTION**] (the "**Outside Closing Date**"). Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.1.2 Extension of Outside Closing Date.

(a) If Developer and District reasonably agree that the milestones set forth on the Schedule of Performance cannot be met prior to the Outside Closing Date, District shall consider submitting a resolution requesting an extension under D.C. Official Code § 10-801 for Council consideration ("**Extension Resolution**"). If Council passes the Extension Resolution, the Outside Closing Date may be extended for a period determined by District, in its sole and absolute discretion.

(b) Developers acknowledge and agree that (i) any Extension Resolution will be granted or denied in the sole and absolute discretion of Council, (ii) Developers shall have no recourse against District if Council fails to approve the Extension Resolution, and (iii) District shall have no future obligation to seek additional extensions under D.C. Official Code § 10-801 if Council fails to approve the Extension Resolution submitted in accordance with this Section 6.1. If Council fails to pass the Extension Resolution, this Agreement shall terminate, in which case District shall deliver the Deposit Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder, except those provisions that expressly survive termination of this Agreement. The Parties

acknowledge and agree that, unless a District Default occurs, all monies spent by Developer and Affordable Housing Developer prior to Closing are "at-risk" and District shall have no liability for Developer's failure or inability to meet the milestones and conditions required to proceed to Closing by the Outside Closing Date.

6.2 DELIVERIES AT CLOSING.

6.2.1 District's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, District shall execute, notarize, and deliver, as applicable, to Settlement Agent:

(a) the Deed in recordable form to be recorded in the Land Records against the Property;

(b) the Construction and Use Covenant for the Project in recordable form to be recorded in the Land Records against the Property;

(c) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and

(d) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

6.2.2 Developer's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and deliver, or cause to be executed, notarized and delivered, as applicable, to Settlement Agent:

(a) the Deed in recordable form for recordation in the Land Records against the Property;

(b) the Purchase Price and any other funds required by the Settlement Statement to be delivered by Developer;

(c) any documents required to close on all of the Debt Financing for Developer's construction of the Project;

(d) the fully executed Development and Completion Guaranty;

(e) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(f) [Intentionally Deleted];

(g) a certificate, duly executed by Developer, stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date;

(h) copies of all (i) Permits and (ii) Approvals for the Project;

(i) a copy of each of the fully executed First Source Agreement and CBE Agreement for the Project;

(j) evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;

(k) any financial statements or updated financial statements of Developer that may be reasonably requested by District;

(l) the following documents evidencing the due organization and authority of Developer and its Managing Member to enter into, join and consummate this Agreement and the transactions contemplated herein:

(i) organizational documents and a current certificate of good standing issued by the District of Columbia with respect to Developer;

(ii) authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer and its Managing Member in connection with this Agreement and development of the Project;

(iii) if requested by District, an opinion of counsel that Developer and its Managing Member are validly organized, existing and in good standing in the District of Columbia, that Developer and its Managing Member have the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer and its Managing Member have taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or its Managing Member or any contract or agreement to which they are a party or by which they are bound; provided, however, that if a separate opinion is provided by Developer's counsel to an Institutional Lender for the Project covering such matters, that Developer may satisfy the requirements of this clause (v) by delivering a counsel letter to District stating that District shall be entitled to rely on the legal opinion provided to the Institutional Lender;

(k) a copy of the agreement between Developer and the Construction Consultant; and

(l) any and all other deliveries required from Developer on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent, and reasonably acceptable to Developer, to effectuate the transactions contemplated by this Agreement.

On the Closing Date, Settlement Agent shall record and distribute documents and funds in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS.

6.3.1 Recordation of Closing Documents. At Closing, Settlement Agent shall file for recordation among the Land Records the Deed and the Construction and Use Covenant for the Project. Such documents shall be recorded prior to any security instruments to be recorded in connection with the Debt Financing.

6.3.2 Closing Costs. At Closing, Developer shall be responsible for and pay all costs pertaining to the transfer and financing of the Property, including, without limitation: (i) title search costs, (ii) title insurance premiums and endorsement charges, (iii) survey costs, (iv) all recordation and transfer taxes, if any, and (v) all Settlement Agent's fees and costs.

6.4 AFFORDABLE HOUSING FINANCING CLOSING.

6.4.1 Timing. Affordable Housing Developer shall close on the Debt Financing and Equity Investment necessary for it to construct the Affordable Housing Project in accordance with the Affordable Housing Development Plan prior to or simultaneously with Closing under the terms of this Agreement (the "**Affordable Housing Financing Closing**"). Affordable Housing Developer shall deliver to District written notice of its intent to proceed to the Affordable Housing Financing Closing no less than ***[sixty (60)]*** days prior to the date on which the Affordable Housing Financing Closing is scheduled to occur. Prior to the Affordable Housing Financing Closing:

(a) the Affordable Housing Development Plan and all Construction Drawings for the Affordable Housing Project shall have been approved as Approved Construction Drawings in their entirety pursuant to Article 4;

(b) any Other Submissions applicable to the Affordable Housing Project shall have been approved in their entirety pursuant to Article 4; and

(c) Affordable Housing Developer shall have delivered to District an Affordable Housing Plan in the form attached hereto as **Exhibit C**.

6.4.2 District Deliveries at Affordable Housing Financing Closing. On or before the Affordable Housing Closing Date, District shall execute, notarize and deliver, as applicable, to the settlement agent designated by Affordable Housing Developer:

(a) the Construction and Use Covenant for the Affordable Housing Project in recordable form to be recorded in the Land Records against the Affordable Housing Property; and

(b) the Affordability Covenant in recordable form to be recorded in the Land Records against the Affordable Housing Property.

6.4.3 Affordable Housing Developer Deliveries at Affordable Housing Financing Closing. On or before the Affordable Housing Financing Closing Date, Affordable Housing Developer shall execute, notarize and deliver, as applicable, to its settlement agent:

(a) the fully executed Development and Completion Guaranty;

(b) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Affordable Housing Property;

(c) the Affordability Covenant in recordable form to be recorded in the Land Records against the Affordable Housing Property;

(d) a copy of the agreement between Affordable Housing Developer and the Construction Consultant;

(e) a certificate, duly executed by Affordable Housing Developer, stating that all of Affordable Housing Developer's representations and warranties set forth herein are true and correct as of and as if made on the date of the Affordable Housing Financing Closing;

(f) copies of all (i) Permits and (ii) Approvals for the Affordable Housing Project;

(g) a copy of each of the fully executed First Source Agreement and CBE Agreement for the Affordable Housing Project;

(h) evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;

(i) any financial statements or updated financial statements of Affordable Housing Developer that may be requested by District;

(j) the following documents evidencing the due organization and authority of Affordable Housing Developer and its Managing Member to enter into, join and consummate this Agreement and the transactions contemplated herein:

(i) organizational documents and a current certificate of good standing issued by the District of Columbia with respect to Affordable Housing Developer;

(ii) authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Affordable Housing Developer and its Managing Member in connection with this Agreement and development of the Affordable Housing Project;

(iii) if requested by District, an opinion of counsel that Affordable Housing Developer and its Managing Member are validly organized, existing and in good standing in the District of Columbia, that Affordable Housing Developer and its Managing

Member have the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Affordable Housing Developer and its Managing Member have taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Affordable Housing Developer or its Managing Member or any contract or agreement to which they are a party or by which they are bound; provided, however, that if a separate opinion is provided by Affordable Housing Developer's counsel to an Institutional Lender for the Affordable Housing Project covering such matters, that Affordable Housing Developer may satisfy the requirements of this clause (v) by delivering a counsel letter to the District stating that the District shall be entitled to rely on the legal opinion provided to such Institutional Lender; and

(i) any and all other deliveries required from Affordable Housing Developer on the Affordable Housing Financing Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or settlement agent for the Affordable Housing Financing Closing, and reasonably acceptable to Affordable Housing Developer, to effectuate the transactions contemplated by this Agreement.

On the date of the Affordable Housing Financing Closing, the settlement agent shall record and distribute documents and funds in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement.

6.4.4 Delivery/Recordation of Certain Documents at Affordable Housing Financing Closing. The Parties acknowledge and agree that, in the event the Affordable Housing Financing Closing occurs prior to Closing on the Project, and Closing on the Project does not occur prior to the Outside Closing Date and this Agreement expires by its terms, Affordable Housing Developer will be released from all obligations under the Affordability Covenant, the Construction and Use Covenant, and the Development and Completion Guaranty and District shall execute such releases and other documents as Affordable Housing Developer may reasonably request to evidence the termination of such obligations.

ARTICLE 7
DEVELOPMENT OF PROPERTY AND AFFORDABLE HOUSING PROPERTY; CONSTRUCTION OF PROJECT AND AFFORDABLE HOUSING PROJECT; CONSTRUCTION AND USE COVENANT; AFFORDABILITY COVENANT

7.1 OBLIGATION TO CONSTRUCT PROJECT.

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the requirements contained in the Construction and Use Covenant and the Schedule of Performance, subject only to Force Majeure; provided, however, Developer's obligations pursuant to the Schedule of Performance shall be extended on a day-to-day basis each time District fails to respond in a timely manner to a submission of Construction Drawings or Other Submissions from Developer, and Developer may seek extension of the milestone dates from District, which may be granted or withheld by District in its sole but reasonable discretion.

Developer's failure to perform its obligations in accordance with the Schedule of Performance, subject to Force Majeure, after notice and opportunity to cure pursuant to Section 8.1, shall constitute a Developer Default which shall entitle District to terminate this Agreement and draw on the Deposit Letter of Credit in its full amount. The Project shall be constructed in accordance with the Approved Construction Drawings and in compliance with all Permits and Applicable Law. The cost of developing the Project shall be borne solely by Developer. As further assurance of the above and of the covenants contained in the Construction and Use Covenant for the Project, Developer shall cause the Development and Completion Guaranty to be executed by applicable Guarantor on or before Closing. Developer shall be responsible for all costs and expenses related to its due diligence, predevelopment and soft costs for the Project. Developer shall be responsible for all costs and expenses related to its due diligence, predevelopment and soft costs for the Project. Upon receipt of a written request from District, Developer shall provide District with copies of executed predevelopment agreements and contracts with third parties as evidence of commencement of predevelopment activities.

7.2 ISSUANCE OF PERMITS.

Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, upon request by Developer, promptly execute applications (as landowner) for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required for demolition (if any), excavation and sheeting and shoring for the Project within a period of time that Developer believes in good faith is reasonably sufficient to allow issuance of such Permits prior to the Closing Date. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing on a periodic basis to District, not more frequently than once every thirty (30) days.

7.3 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 Project Development Plan and 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 under all required Permits and in accordance with all appropriate District of Columbia agency approvals, government standards and Applicable Law.

7.4 OBLIGATION TO CONSTRUCT AFFORDABLE HOUSING PROJECT.

(a) Except as provided in Section 6.4.4, Affordable Housing Developer agrees that it will develop, construct, use, maintain, and operate the Affordable Housing Project in accordance with the Affordable Housing Development Plan and the requirements contained in the applicable Construction and Use Covenant, the Affordability Covenant and the Schedule of Performance, subject only to Force Majeure; provided, however, Affordable Housing Developer's obligations pursuant to the Schedule of Performance shall be extended on a day-to-day basis each time District fails to respond in a timely manner to a submission of Construction Drawings or Other Submissions from Affordable Housing Developer, and Affordable Housing Developer may seek extension of the milestone dates from District, which may be granted or withheld by District in its sole but reasonable discretion; and provided, further, that Affordable Housing Developer's failure to perform its obligations in accordance with the Schedule of Performance, subject to Force Majeure, after notice and opportunity to cure pursuant to Section 8.1, may constitute a Developer Default which shall entitle District to terminate this Agreement and draw on the Deposit Letter of Credit in its full amount.

(b) Affordable Housing Developer agrees that it will deliver, prior to the Affordable Housing Financing Closing, an Affordable Housing Plan in the form attached hereto as **Exhibit C** governing the requirements for ADUs, including specific affordability levels, tenure type, unit mix, bedroom size breakdowns and formula for the rents of the ADUs, which Affordable Housing Plan shall be subject to the prior approval of District. At the Affordable Housing Financing Closing, Developer shall execute the Affordability Covenant reflecting the above provisions. Subject to the provisions of the Affordability Covenant, the ADUs shall be of the size and AMI levels set forth on the Affordable Housing Plan.

(c) The Affordable Housing Project shall be constructed in accordance with the Approved Construction Drawings and in compliance with all Permits and Applicable Law. The cost of developing the Affordable Housing Project shall be borne solely by Affordable Housing Developer. As further assurance of the above and of the covenants contained in the applicable Construction and Use Covenant, Affordable Housing Developer shall cause the applicable Development and Completion Guaranty to be executed by applicable Guarantor on or before Affordable Housing Financing Closing. Affordable Housing Developer shall be responsible for all costs and expenses related to its due diligence, predevelopment and soft costs for the Affordable Housing Project. Affordable Housing Developer shall provide District with copies of executed predevelopment agreements and contracts with third parties as evidence of commencement of predevelopment activities.

(d) In connection with its development and construction of the Affordable Housing Project, Affordable Housing Developer shall comply with the requirements set forth in Section 7.2 and Section 7.3 above relating to Permits and site preparation for the Affordable Housing Project.

(e) The obligations of Affordable Housing Developer to construct the Affordable Housing Project in accordance with this Section 7.4 shall terminate in the event that the Closing on the Project does not occur by the Outside Closing Date, and Affordable Housing Developer shall have no further obligations under this Agreement to construct the Affordable Housing Project.

7.5 OPPORTUNITY FOR CBE'S.

In cooperation with District, Developers shall comply with the terms and conditions set forth in their respective CBE Agreements.

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT.

Pursuant to Mayor's Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developers recognize that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer and Affordable Housing Developer agree to enter into First Source Agreements with DOES, prior to Closing, with respect to the Project and the Affordable Housing Project, respectively, which First Source Agreements require, among other things, that Developer and Affordable Housing Developer: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by the Project and the Affordable Housing Project, as appropriate, all in accordance with such First Source Employment Agreements, and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council.

7.7 DAVIS BACON; LIVING WAGE ACT.

If applicable, Developers shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), and the regulations promulgated therewith. In addition, as required under D.C. Official Code § 2-220.06, Developers shall cause their respective general contractors to comply with all requirements under the "*Living Wage Act of 2006*", D.C. Official Code § 2-220.01 *et seq.* The general contractors shall notify all subcontractors of the requirements under the Living Wage Act and shall post the notice required by the Living Wage Act requirements in a conspicuous site at its place of business.

7.8 GREEN BUILDING ACT.

Developer shall construct the Project, and Affordable Housing Developer shall construct the Affordable Housing Project, in accordance with the Green Building Act. Developer shall use commercially reasonable efforts to design the Project to achieve an equivalent of LEED Silver standard or higher.

7.9 RETAIL COMPONENT.

Developer shall consult with District with regard to the nature, size and identity of the retail uses in the Project. Subject to applicable zoning Approvals, the retail component of the Project shall contain approximately 7600 square feet of rentable space.

7.10 HOTEL LABOR PEACE.

Developer shall comply with the Hotel Development Projects Labor Peace Agreement Act of 2002, D.C. Official Code §§ 32-851 *et seq.*

ARTICLE 8
DEFAULTS AND REMEDIES

8.1 DEFAULT.

8.1.1 Pre-Closing Default by Developer or Affordable Housing Developer. Prior to achievement of Closing, Developer and Affordable Housing Developer shall be in default under this Agreement if either fails to perform or comply with any term, condition, obligation, provision or requirement under this Agreement, including, without limitation, the Schedule of Performance, and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such continuing uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer or Affordable Housing Developer shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, Developer and Affordable Housing Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in no event shall the cure periods provided herein with respect to a pre-Closing default delay the Closing beyond the Outside Closing Date (as may be extended in accordance with this Agreement).

8.1.2 Default by Developer or Affordable Housing Developer After Closing. After achievement of Closing on the Project, a default by either of the Developers shall not be deemed to be a default by the other.

8.1.3 Default by District. District shall be in default under this Agreement if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer or Affordable Housing Developer (any such continuing uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, District must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay Closing beyond the Outside Closing Date (as may be extended in accordance with this Agreement).

8.2 DISTRICT REMEDIES IN THE EVENT OF A DEVELOPER DEFAULT.

8.2.1 Remedies Prior to Closing. In the event of a Developer Default, pertaining to either the Project or the Affordable Housing Project, under this Agreement prior to Closing, District may elect to:

(a) terminate this Agreement and, as liquidated damages, draw on the Deposit Letter of Credit, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications with regard to the development and construction of the Project and all Other Submissions with respect to the Project, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District subject to any reasonable and customary restrictions contained in any applicable vendor agreements; or

(b) cure any default, the costs of which shall be paid by Developers and, if not paid, District shall be entitled to draw on the Deposit Letter of Credit for partial reimbursement of District's reasonable out-of-pocket costs incurred to cure the default.

8.2.2 Remedies After Closing. In the event of a Developer Default under this Agreement after Closing with respect to the Project, District shall be entitled to all the remedies set forth in the Deed, the Construction and Use Covenant with respect to the Project and the Development and Completion Guaranty with respect to the Project. In the event of Developer Default under this Agreement after Closing with respect to the Affordable Housing Project, District shall be entitled to all the remedies set forth in the Construction and Use Covenant with respect to the Affordable Housing Project, the Affordability Covenant, and the Development and Completion Guaranty with respect to the Affordable Housing Project.

8.2.3 General. The remedies of District provided in this Section 8.2 shall be the sole and exclusive remedies of District in the event of a Developer Default. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developers be liable for any consequential, punitive, or special damages.

8.3 DEVELOPERS' REMEDIES IN THE EVENT OF A DISTRICT DEFAULT.

8.3.1 Remedies Prior to Closing. In the event of a District Default prior to Closing, Developer and/or Affordable Housing Developer may elect to (a) extend the Closing Date for a reasonable period of time to allow District to cure the District Default, not to exceed the Outside Closing Date, (b) pursue specific performance or other equitable relief, or (c) terminate this Agreement, whereupon District will deliver the Deposit Letter of Credit to Developer and/or Affordable Housing Developer and Developer and/or Affordable Housing Developer may seek money damages from a court of competent jurisdiction and in accordance with Section 13.15 and District of Columbia law. Any such monetary damages sought by Developer and/or Affordable Housing Developer shall be limited to reasonable actual out-of-pocket costs and expenses that are incurred by Developer and/or Affordable Housing Developer in connection with (i) Developer's Studies, title and survey preparation and examination, and any work performed under Section 2.3.1 hereof; (ii) the design, planning, permitting and financing of the Project and Affordable Housing Project; and (iii) the negotiation and preparation of this Agreement and any documents to be delivered at Closing and/or the Affordable Housing Financing Closing under this Agreement or in connection with the Debt Financing or Equity Investment, including, without limitation, reasonable attorney's and accountant's fees and related expenses, architectural and engineering fees and the fees of other professionals involved in the preparation of the Construction Drawings, consulting fees, costs relating to Permits and Permit expediters,

financing fees and points, and insurance. Upon District's payment of such damages to Developers pursuant to this Section 8.3.1 the Parties shall be released from any further liability or obligation hereunder except for those that expressing survive termination of this Agreement.

8.3.2 Remedies After Closing. In the event of a District Default under this Agreement after Closing, Developer and Affordable Housing Developer shall be entitled to all the remedies set forth in the Deed, the applicable Construction and Use Covenant and the Affordability Covenant (if applicable) in accordance with applicable District of Columbia law.

8.3.3 General. The remedies of Developer and Affordable Housing Developer provided in this Section 8.3 shall be the sole and exclusive remedies of Developer and Affordable Housing Developer in the event of a District Default. Notwithstanding anything to the contrary contained in this Agreement, in no event shall District be liable for any consequential, punitive, or special damages.

8.4 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 Article, 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 no Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by any Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section 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.

ARTICLE 9
FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN; PROJECT BUDGET; AFFORDABLE HOUSING FUNDING PLAN; AFFORDABLE HOUSING PROJECT BUDGET.

9.1.1 Project Funding Plan; Affordable Housing Funding Plan. As of the Effective Date, Developer has provided District its initial Project Funding Plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which plan is attached hereto as **Exhibit L-1** (such plan, as may be modified from time to time in accordance with this Agreement being the "**Project Funding Plan**") and also as of the Effective Date, Affordable Housing Developer has provided District with its initial Affordable Housing Funding Plan describing the sources and uses of funds for the Affordable Housing Project and the methods for obtaining such funds (including lending sources), which plan is attached hereto as **Exhibit L-2** (such plan, as may be modified from time to time in accordance with this Agreement being the "**Affordable Housing Funding Plan**"). The Affordable Housing Funding Plan shall include details of the funding, if any, from the District of Columbia Department of Housing and Community Development for the Affordable Housing Project.

9.1.2 Project Budget; Affordable Housing Budget. As of the Effective Date, Developer has provided District its initial Project Budget describing the expenditure of direct and indirect costs for the Project, as further described in the definition of Project Budget, which Project Budget is attached hereto as **Exhibit M-1** (such budget, as may be modified from time to time in accordance with this Agreement being the "**Project Budget**"), and also as of the Effective Date, Affordable Housing Developer has provided District its initial Affordable Housing Project Budget describing the expenditure of direct and indirect costs for the Affordable Housing Project, as further described in the definition of Affordable Housing Project Budget, which Affordable Housing Project Budget is attached hereto as **Exhibit M-2** (such budget, as may be modified from time to time in accordance with this Agreement being the "**Affordable Housing Project Budget**").

9.1.3 Final Project Budget and Funding Plan; Final Affordable Housing Project Budget and Funding Plan. Within sixty (60) days after Developer submits the Approved Construction Drawings to DCRA for each of the Project and the Affordable Housing Project, as applicable, Developer (or Affordable Housing Developer) shall provide to District a revised Project Budget (or Affordable Housing Project Budget, as appropriate) and Project Funding Plan (or Affordable Housing Project Funding Plan, as appropriate) and such supporting documentation as District may reasonably request. Developer (or Affordable Housing Developer) shall further modify the Project Budget (or Affordable Housing Project Budget) and Project Funding Plan (or Affordable Housing Funding Plan) (i) upon receipt of the Commitment Letters for the Equity Investment and Debt Financing and (ii) within sixty (60) days but no later than thirty (30) days prior to Closing. Upon District's approval of the modified Project Budget (or Affordable Housing Project Budget) and Project Funding Plan (or Affordable Housing Funding Plan) submitted pursuant to clause (ii), such modified Project Budget (or Affordable Housing Project Budget) and Project Funding Plan (or Affordable Housing Funding Plan) shall be the "**Final Project Budget and Funding Plan**" for such project, except that the Affordable Housing Project Budget and Affordable Housing Funding Plan shall not require District approval, but shall be updated and delivered to District in accordance with this Section 9.1.3.

9.1.4 Modifications. After Closing, Developer (or Affordable Housing Developer, as the case may be) shall be permitted to modify the Final Project Budget and Funding Plan for the Project (or the Affordable Housing Project) with District's approval, as may be reasonably necessary to construct the Project (or the Affordable Housing Project) in accordance with the applicable Approved Construction Drawings, provided that the applicable Development and Completion Guaranty remains in full force and effect and Developer (or Affordable Housing Developer) notifies District of such modifications in accordance with the applicable Construction and Use Covenant. Notwithstanding anything else in this subsection, the Final Project Budget and Funding Plan for the Project or the Affordable Housing Project may be modified without District's approval if such modifications are as a result of non-Material Changes to the Approved Construction Drawings, use of contingency funds, or transfers among "hard" and "soft" cost budget items, exclusive of fees payable to Developer (or Affordable Housing Developer); provided, however, that in the event either Final Project Budget and Funding Plan is modified without District's approval, Developer (or Affordable Housing Developer) shall notify District of such modification within five (5) Business Days of such modification.

9.2 DEBT FINANCING.

9.2.1 No Encumbrances. Beginning at Closing, Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property or Developer's interest in the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, in its sole but reasonable discretion. Affordable Housing Developer may obtain Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Affordable Housing Property, provided such encumbrance is subordinate to the applicable Construction and Use Covenant and the Affordability Covenant.

9.2.2 Bona Fide Indebtedness. The Debt Financing obtained in connection with Closing, the Affordable Housing Financing Closing and construction of the Project and Affordable Housing Project shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the applicable Final Project Budget and Funding Plan; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund the development, construction, operation or any other costs relating to any real property, personal property or business operation other than the Project (or the Affordable Housing Project); and (ii) the amount thereof, together with all other funds available to Developer, shall be sufficient to complete construction of the Project (or the Affordable Housing Project, as applicable).

9.2.3 Submissions. At least thirty (30) days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing or Mortgage, and at least (30) days prior to the Affordable Housing Financing Closing, Affordable Housing Developer shall submit to District for informational purposes, such documents as District may reasonably request, including, but not limited, copies of:

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

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

(c) a copy of the proposed Mortgage and a description of the portion of the Property (or Affordable Housing Property) that such documents will encumber.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 Assignment by Developers. Prior to Closing, Developer and Affordable Housing Developer represent, warrant, covenant, and agree, for themselves and their respective successors and assigns, that Developer and Affordable Housing Developer (or any successor in

interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, except to Developer's or Affordable Housing Developer's Affiliates or Members, without District's prior written approval, which may be granted or denied in District's sole discretion. After Closing, Developer (or Affordable Housing Developer) may transfer or assign the Property (or the Affordable Housing Property) (or portions thereof) in accordance with the applicable Construction and Use Covenant and the Deed (in the case of the Property), but in any event assignment shall not be permitted prior to Final Completion.

10.2 Transfer of Membership Interests. Prior to Closing, neither Developer nor any Member of Developer (or Affordable Housing Developer or any Member of Affordable Housing Developer) (including any successors in interest of Developer or Affordable Housing Developer or their respective Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer or Affordable Housing Developer except to their respective Affiliates or Members or in connection with an Equity Investment in Developer (or Affordable Housing Developer, as the case may be); provided, however, no membership interest shall be held by a Prohibited Person ("**Transfer of Membership Interests**"). In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers in ownership interest to any Member or an Affiliate of any Member, including, without limitation, transfers for estate planning purposes. After Closing, Developer or Affordable Housing Developer may conduct a Transfer of Membership Interests in accordance with the applicable Construction and Use Covenant and the Deed (in the event of Developer), but in any event a Transfer of Membership Interests shall not be permitted prior to Final Completion.

10.3 No Unreasonable Restraint. Developer and Affordable Housing Developer hereby acknowledge and agree that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's or Affordable Housing Developer's right to transfer or otherwise alienate the Property or the Affordable Housing Property, as applicable, or their respective rights under this Agreement. Developer and Affordable Housing Developer hereby waive 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.

10.4 Assignment by District. District represents, warrants, covenants and agrees that it shall not assign its rights or delegate its obligations under this Agreement except to another District agency or to an entity controlled by District.

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS.

11.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer and Affordable Housing Developer shall carry and maintain in full force and effect the following insurance policies:

(a) Automobile Liability and Commercial General Liability Insurance - At all times after Closing until achievement of Final Completion with respect to the Project and the Affordable Housing Project, Developer and Affordable Housing 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 and Affordable Housing Developer is required to carry shall not be construed as any limitation on Developer's or Affordable Housing Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(b) Workers' Compensation Insurance - At all times after Closing until achievement of Final Completion with respect to the Project and the Affordable Housing Project, Developer and Affordable Housing Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(c) Professional Liability Insurance - During development of the Project and Affordable Housing Project, Developer and Affordable Housing Developer shall cause their respective Architect and every engineer or other professional who will perform services in connection with the Project or the Affordable Housing 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.

(d) Contractor's Pollution Legal Liability Insurance - At all times after Closing until achievement of Final Completion with respect to the Project and the Affordable Housing Project, Developer shall not remove, store, transport, or dispose of Hazardous Materials if the cost of such removal, storage, transport or disposal is reasonably expected to exceed $1,000,000, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities, if such policy is available at a commercially reasonable cost. 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 Hazardous Materials.

11.1.2 General Policy Requirements. Developer and Affordable Housing Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section 11.1 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. Prior to any entry onto the Property at

any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. 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.

11.2 INDEMNIFICATION.

Developer and Affordable Housing Developer, jointly and severally, shall indemnify, defend, and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property that is directly or indirectly caused by any acts done on their respective properties or any acts or omissions of Developer and Developer's Agents or Affordable Housing Developer and Affordable Housing Developer's Agents; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due to the gross negligence or willful misconduct of District. The obligations of Developer and Affordable Housing Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12
NOTICES

12.1 TO DISTRICT.

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

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attn: Project Manager- 5th&I

With a copy to:

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

12.2 TO DEVELOPERS.

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

TPC 5TH & I PARTNERS, LLC
c/o The Peebles Corporation
2020 Ponce De Leon Blvd., Suite 907
Coral Gables, FL 333134
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, Affordable Housing Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement 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 Agreement. The Parties agree that counsel to any of them may provide notice to the other Parties under this Agreement.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS.

Developers, for themselves and their respective successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waive, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of their being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

No official or employee of District shall participate in any decision relating to this Agreement 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 Developers or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developers or such successor-in-interest or on any obligations hereunder. Further, no member, employee, officer, director, or shareholder of Developers shall be personally liable to District in the event of any default or breach by Developer or Affordable Housing Developer or for any amount which may become due to District or on account of any obligations hereunder.

13.3 SURVIVAL; PROVISIONS NOT MERGED WITH DEED.

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed.

13.4 TITLES OF ARTICLES AND SECTIONS.

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

13.5 LAW APPLICABLE; FORUM FOR DISPUTES.

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developers 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 Agreement or any transaction contemplated hereby. District and Developers irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts described in (a) and (b), above, 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.

13.6 ENTIRE AGREEMENT; EXHIBITS.

13.6.1 This Agreement (including the Exhibits annexed hereto and made part hereof including, without limitation, the Council Term Sheet), together with any document delivered pursuant to this Agreement collectively contain all the agreements and understandings between District and Developers relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof. Upon execution of this Agreement, all previous agreements shall be deemed null and void.

13.6.2 All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement that occurs prior to Closing, this Agreement shall control. In the event of any conflict between the Exhibit and this Agreement that occurs after Closing, the Exhibits shall control.

13.7 COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Delivery of executed counterparts of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.8 TIME OF PERFORMANCE.

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next Business Day.

13.9 SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of, the successors and assigns of District, Developer and Affordable Housing Developer, and where the term "Developer", "Affordable Housing Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns.

13.10 THIRD PARTY BENEFICIARY.

No Person shall be a third party beneficiary of this Agreement.

13.11 WAIVER OF JURY TRIAL.

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

13.12 FURTHER ASSURANCES.

Each Party agrees to execute and deliver to the other Parties such additional documents and instruments as the other Parties reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.13 MODIFICATIONS AND AMENDMENTS.

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which

enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same. In addition, if any Party seeks to amend or change any material terms set forth in the Council Term Sheet, the Parties must seek and receive Council approval as required under D.C. Official Code § 10-801(b-1)(6).

13.14 SEVERABILITY.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement 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 Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.15 ANTI-DEFICIENCY LIMITATION; AUTHORITY.

13.15.1 Though no financial obligations on the part of District are anticipated, Developers acknowledge that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

13.15.2 Developers acknowledge and agree that any unauthorized act by District is void. It is Developers' obligation to accurately ascertain the extent of District's authority.

13.16 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE.

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.17 NO PARTNERSHIP.

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and/or Affordable Housing Developer, on the one hand, and District, on the other hand.

13.18 EACH PARTY TO BEAR ITS OWN COSTS.

Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.

13.19 DISCRETION.

Unless explicitly provided to the contrary in this Agreement, where any Party has the right to approve or consent to any matter herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed nor any charge made therefor.

13.20 FORCE MAJEURE.

Neither District nor Developers, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations with respect to the Property or the Affordable Housing Property in the event of forced delay in the performance of such obligations due to Force Majeure, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure events continues to materially and adversely affect the performance by such Party of such obligations. The Party seeking the benefit of this Section 13.20 shall notify the other Parties in writing within ten (10) days after it becomes aware of the beginning of any such Force Majeure event of the cause or causes thereof, with supporting documentation, and request an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developers must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; (c) in the case of any other delay in obtaining approval from, or changes ordered by, any District governmental entity, Developers must have notified the Office of the Deputy Mayor for Planning and Economic Development when the issue arose, and (d) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If any Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

13.21 JOINT PREPARATION.

Each of the Parties acknowledges that it has thoroughly read and reviewed this Agreement, including all Exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, District and Developers have each caused this Agreement to be signed, acknowledged and delivered in its name by its duly authorized representative as of the day and year first above written.

DISTRICT:

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

Witness:

_____

By: _____
Name: M. Jeffrey Miller
Title: Interim Deputy Mayor for Planning and Economic Development

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

DEVELOPER:

TPC 5TH & I PARTNERS LLC, a District of Columbia limited liability company

BY: TPC 5th & I Manager LLC, a District of Columbia limited liability company

By: _____
R. Donahue Peebles, Jr.

Title:_____

Witness:

_____

AFFORDABLE HOUSING DEVELOPER:

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

By:_____
R. Donahue Peebles, Jr.
Authorized Signatory

Witness:

_____

EXHIBITS

Exhibits:

Exhibit A-1	Legal Description of the Property
Exhibit A-2	Legal Description of the Affordable Housing Property
Exhibit B	Form of Affordability Covenant
Exhibit C	Affordable Housing Plan [*to be attached when complete*]
Exhibit D	CBE Agreement(s)
Exhibit E-1	Form of Construction and Use Covenant for the Property
Exhibit E-2	Form of Construction and Use Covenant for the Affordable Housing Property
Exhibit F	Council Term Sheet
Exhibit G	First Source Agreement(s)
Exhibit H-1	Project Development Plan
Exhibit H-2	Affordable Housing Development Plan
Exhibit I	Deed
Exhibit J	Schedule of Performance
Exhibit K	Right of Entry Agreement [*to be attached when complete*]
Exhibit L-1	Project Funding Plan
Exhibit L-2	Affordable Housing Funding Plan
Exhibit M-1	Project Budget
Exhibit M-2	Affordable Housing Project Budget
Exhibit N-1	Form of Development and Completion Guaranty for the Project
Exhibit N-2	Form of Development and Completion Guaranty for the Affordable Housing Project
Exhibit O	Form of Deposit Letter of Credit

Exhibit A-1
Legal Description of the Property

All that certain lot, piece or parcel of land, together with all improvements thereon, situate, lying and being in the District of Columbia, and being all of Lot 59, Square 0516.

Exhibit A-2
Legal Description of the Affordable Housing Property

That certain lot, piece or parcel of land, together with all improvements thereon, situate, lying in the District of Columbia, and being a part of Lot 1023, Square 5782 and more particularly described as follows:

Commencing at a point at the northwest corner of Square 5782, being the intersection of the south line of V Street, S.E. and the east line of Martin Luther King Jr. Avenue, S.E.; thence S76°57'E 110.10 feet with the south line of V Street, S.E. to the Point of Beginning; thence continuing with the south line of V Street, S.E. S76°57'E 125.90 feet to a point; thence the following courses and distances: thence departing said south line of V Street, S.E. S13°03'W 130.0 feet to a point; thence N76°57'W 105.0 feet to a point; thence S13°03'W 16.81 feet to a point; thence N71°39'10"W 14.38 feet to a point; thence S20°22'32"W 48.03 feet to a point; thence S16°25'52"W 24.01 feet to a point; thence N71°39'10"W 17.35 feet to a point; thence N17°53'E 216.26 feet to the Point of Beginning and containing 18,841 square feet by record.

Exhibit B
Form of Affordability Covenant

Exhibit B

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (this "**Covenant**") is made as of the ___day of _____, 20_ ("**Effective Date**"), by MLK DC AH DEVELOPER, LLC, a Delaware limited liability company and its successors and assigns (the "**Developer**") having an address of _____, for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**").

RECITALS

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

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

R-3. District, TPC 5th & I Partners, LLC, a District of Columbia limited liability company ("TPC") and Developer entered into that certain Land Disposition and Development Agreement, dated _____, 20__, as the same may be amended (the "**Development Agreement**") whereby, *inter alia*, Developer agreed to construct on the Property a multifamily housing building containing no less than 61 Affordable Units (the "**Project**"), in conformance with the requirements set forth in this Covenant and the Construction and Use Covenant, dated as of this date between Developer and District (the "**Construction and Use Covenant**"), recorded as an encumbrance on the Property in the Land Records of the District of Columbia immediately prior to the recordation of this Covenant, and after the construction of the Project Developer shall manage and lease the Affordable Units to be constructed in the Project in accordance with this Covenant.

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

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

ARTICLE I
DEFINITIONS

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

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that one hundred percent (100%) of the Residential Units to be contained in the Project are to be Affordable Units and reserved for Households with an Annual Household Income at or below sixty percent (60%) AMI.

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

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

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

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

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

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

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

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

Annual Report: has the meaning given in Section 4.10.

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

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

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

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

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

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

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

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

Developer: is identified in the preamble of this Covenant.

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

Foreclosure Notice: is defined in Section 8.4.

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

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

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

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

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

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

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

Maximum Allowable Rent: as defined in Section 4.4.2.

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

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

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or **MINI**: is the minimum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to (a) Section 4.5.2 for Rental Affordable Units and (b) Section 5. 2.1 for For Sale Affordable Units.

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

Mortgagee: means the holder of a Mortgage.

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

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

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

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

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

Over-Income Tenant: as defined in Section 4.6.5.

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

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

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

Property: is defined in the Recitals.

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

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

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

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

Rental Formula: is defined in Section 4.4.2.

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

Sale: is defined in Section 5.1.

Transferee: is defined in Section 5.8.

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

ARTICLE II
AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** Developer shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

2.2 **Affordable Unit Standards and Location.**

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

2.3 **Marketing Affordable Units.**

2.3.1 *Marketing Plan.* Developer shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Developer may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

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

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

ARTICLE III
USE

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

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

ARTICLE IV
RENTAL OF AFFORDABLE UNITS

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

4.2 **Rental Affordable Unit Lease Requirements.**

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

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

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

4.3 **Rental Affordable Unit Admissions Process.**

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

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

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

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

4.4 **Initial Rental Affordable Unit Lease Terms.**

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

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

(1) AMI = see definitions

(2) DAL = Designated Affordability Level (%)

(3) OSF = Occupancy Standard Factor

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

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

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

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

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

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

4.6 **Subsequent Lease Years.**

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

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

4.6.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Certifying Authority shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of

the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit.

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

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or Developer, at direction of the Agency, shall be required to give the Over-Income Tenant notice to quit the Property upon the expiration of its lease.

4.6.6 *Changes to Unit Location.* Developer may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level, if one exists on the Property, or to a Market-Rate Unit, if any exist on the Property, as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Developer shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V
SALE OF AFFORDABLE UNITS

5.1 **Sale of For Sale Affordable Units.** In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such individual Affordable Units. Owner shall not convey all or any part of its fee interest ("**Sale**"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. The provisions of this Article V shall not apply to any sale by Developer of the entire Project to a new Owner.

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

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

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

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

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

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

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

5.3 **Closing Procedures and Form of Deed.**

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

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

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

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

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

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria do not violate applicable District of Columbia and federal laws and are the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400, *et seq.* Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

5.5 **Representations of Owner.** By execution of a deed for a For Sale Affordable Unit, Developer (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a

Qualified Purchaser by the Certifying Authority at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

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

5.7 **Leasing For Sale Affordable Units**. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit except with the Agency's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed in the event such subtenant is a Qualified Tenant. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules).

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

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

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

ARTICLE VI
DEFAULT; ENFORCEMENT AND REMEDIES

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

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

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

ARTICLE VII
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

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

ARTICLE VIII
MORTGAGES

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

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

8.3 **Default of Mortgage and Foreclosure.**

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

8.3.2 *Right of Purchase by the District.* The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The

Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Affordable Unit.

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

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

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

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

ARTICLE IX
AMENDMENT OF COVENANT

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

ARTICLE X
AFFORDABILITY PERIOD

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the "Affordability Period." If the Project contains For Sale Affordable Units, the "Affordability Period" for each For Sale Affordable Unit shall begin on the date of the Sale to the initial Affordable Unit Owner and continue for a period of ninety-five (95) years. The Affordability Period for each For Sale Affordable Unit is renewed upon each subsequent sale of the For Sale Affordable Unit. If the Project contains Rental Affordable Units, the "Affordability Period" for all of the Rental Affordable Units shall begin on the date of the lease of the first Rental Affordable Unit and continue for a period of forty (40) years, which date shall be memorialized in an acknowledgment executed by the District and Developer and recorded in the Land Records. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

ARTICLE XI
NOTICES

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

DISTRICT:

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

All notices to be sent to Developer shall be sent to the address given in the preamble. All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the District with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

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

ARTICLE XII
MISCELLANEOUS

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

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

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

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

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

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

12.7 **Limitation on Liability.** Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant; provided, however, in no event shall any partner, officer, director, member employee, agent, representative, affiliate or subsidiary of Owner have any liability under this Section 12.7 absent intentional misrepresentation or fraud.

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

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

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

(a) This Covenant has been duly executed and delivered by Developer, and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer, and its successors and assigns, in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law);

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

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

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

[*Signatures on Following Pages*]

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

WITNESS:

By: _____

DEVELOPER:

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

By:

_____

Name: R. Donahue Peebles, Jr.

Authorized Signatory

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

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

Given under my hand and seal this ____ day of_____.

_____

Notary Public

My Commission Expires: _____

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

WITNESS:

By:_____

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

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

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

By: _____

Date: _____

EXHIBIT A
Legal Description of Property

(Subdivided portion of Lot commonly known as 2100 MLK Avenue, SE in Washington, D.C.)

See Attached

EXHIBIT B

Rental Affordable Unit Lease Rider

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

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

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

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

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

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

(i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,

(ii) all information pertaining to the Resident's household composition and income for all household members,

(iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Unit, as well as how to contact such sources, and

(iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

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

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

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

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

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the D.C. Department of Housing and Community Development, which consent shall not be unreasonably withheld, conditioned or delayed in the event such subtenant is a Qualified Tenant.

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

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

EXHIBIT C

Affordable Unit Index

SCHEDULE 1

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

[To be revised appropriately to reflect 60% AMI Affordable Unit]

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

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

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

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

Minimum Annual Household Income for Rental Affordable Units:

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

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

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

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

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

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

Minimum Annual Household Income for For Sale Affordable Units:

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

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

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

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

A5: **No.** The Household's income is $55,000, which is less than $58,537.
$2,200 * 12 / 41% = $58,537

SCHEDULE 2

Maximum Sales Price

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

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

Multi-Family Development

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

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

Single-Family Development

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

iii. *Monthly Hazard Insurance, if single family home*: Estimated to be $125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.

iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction ($70,200 in 2014) at current real estate tax rates ($0.85 per $100 in 2014).

v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Sale Price would be 5.40%.

vi. *Down payment*: Assume a down payment of 5% on the purchase of the Affordable Unit.

SCHEDULE 3

Provisions Governing Calculation of Maximum Resale Price

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

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

(1) As the result of the formula F = (1 + [((AMI Year m /AMI Year m-10) ^ (1/10) -1) +...((AMI Year k /AMI year k-10) ^ (1/10) -1) / n]) ^ n, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or

(2) As published by the Agency.

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

(a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and

(b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNCIL DRAFT

Exhibit C
Affordable Housing Plan

Exhibit D
CBE Agreement(s)

Exhibit E-1
Form of Construction and Use Covenant for the Property

EXHIBIT E-1

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this "**Covenant**") is made as of the _____ day of _____, 20__ (the "**Effective Date**"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**") and (ii) TPC 5TH & I PARTNERS LLC, a District of Columbia limited liability company ("**Developer**").

RECITALS

R-1. District is the fee simple title owner of the real property located in Washington, D.C., known for tax and assessment purposes as Square 0516, Lot 0059 (the "**Property**"), more commonly known as 901 Fifth Street, NW, which Property is more fully described in **Exhibit A** attached hereto.

R-2. District and Developer entered into a Land Disposition and Development Agreement, dated as of _____, 20__ (the "**Agreement**"), pursuant to which District agreed to convey the Property to Developer, subject to certain terms and conditions.

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design as well as the construction and use of the Project, as necessary and appropriate to serve District of Columbia residents.

R-4. As required by the Agreement, Developer, for the benefit of District, agrees to construct the Project on the Property in accordance with the Approved Construction Drawings.

NOW, THEREFORE, the Parties hereto agree that the Property shall be subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS

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

"Acceptable Bank" means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short-term deposits or commercial paper of at least Aa3 (or equivalent) by Moody's Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor's Corporation.

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

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

"**ANC**" means an Advisory Neighborhood Commission.

"Applicable Law" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws, if applicable, relating to historic preservation and laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act, 40 U.S.C. § 276(a).

"**Approved Construction Drawings**" shall mean all Construction Drawings (as defined in the Agreement), including the Construction Plans and Specifications, approved by District pursuant to the Agreement, and any permitted changes thereto under this Covenant.

"Architect" means the architect of record, licensed to practice architecture in the District of Columbia, which Developer has selected and District has approved for the Project.

"Business Days" means Monday through Friday, inclusive, other than holidays recognized by the District government.

"**CBEs**" means a Person that has been issued a certificate of registration by DSLBD pursuant to D.C. Official Code §§ 2-218.01, *et seq.*

"**CBE Agreement**" is that agreement between Developer and DSLBD executed prior to the Effective Date, governing certain obligations of Developer under D.C. Official Code §§ 2-218.01, *et seq.* regarding participation by and contracting and employment of CBEs in the Project.

"Certificate of Occupancy" means a certificate of occupancy or similar document or permit that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof, including all Residential Units.

"Commencement of Construction" means the time at which Developer has (i) executed a construction contract with its Contractor; (ii) given such Contractor a notice to proceed under said construction contract; (iii) caused such Contractor to mobilize on the Property equipment necessary for demolition, if any; and (iv) obtained any required Permits for demolition and sheeting and shoring and commenced demolition, if any, upon the Property pursuant to the Approved Construction Drawings. For purposes of this Covenant, the term "**Commencement of Construction**" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for development of the

Improvements thereon or the investigations of environmental conditions, but "**Commencement of Construction**" shall include any material removal of Hazardous Materials from the Property by Developer in anticipation of excavation for construction.

"**Community Participation Program**" means the plan, attached hereto as **Exhibit C**, by which Developer shall apprise the immediate ANC and other community organizations of the status of the Project, which shall comply with Section 2.9.

"**Compliance Form**" is defined in Section 2.10.2.

"Concept Plans" are the design plans, submitted by Developer and approved by District prior to the Effective Date, which serve the purpose of establishing the major direction of the design of the Project.

"**Construction Consultant**" is the construction consultant retained by Developer for the Project and approved by District pursuant to the Agreement.

"Construction Plans and Specifications" mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project submitted by Developer and approved by District prior to the Effective Date which are used to obtain Permits, to prepare detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Project.

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

"**Contractor**" means _____, which Developer has selected and District has approved for the Project.

"**Control**" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners or Persons exercising similar authority with respect to the subject Person. A lender's right to foreclose or to accept a deed in lieu of foreclosure under a loan secured by the Property or any part thereof following a default under the documents evidencing or securing such loan or, an equity investor's right to obtain management control in the event Developer or its Affiliate defaults in its obligations under the Operating Agreement for Developer shall not constitute a change of "Control." The terms "**Control**," "**Controlling**," "**Controlled by**" or "**under common Control with**" shall have meanings correlative thereto.

"**Council**" means the Council of the District of Columbia.

"**Covenant**" is defined in the Preamble.

"**DDOE**" means the District of Columbia Department of the Environment.

"**Deed**" means that certain Special Warranty Deed, dated this date, by District as grantor to Developer as grantee.

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

"Design Development Plans" are the design plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape submitted by Developer and approved by District prior to the Effective Date.

"**Development and Completion Guaranty**" is that guaranty, of even date herewith, by the Guarantor, which binds Guarantor to develop and otherwise construct the Project in the manner and within the time frames required by the terms of the Agreement and this Covenant.

"**Developer**" means TPC 5th & I Partners LLC, and its permitted successors and assigns.

"**Developer's Agents**" mean Developer's agents, employees, consultants, contractors, and representatives.

"Developer's Certificate of Completion" means that certificate provided by Developer to District upon Substantial Completion, as required under Section 2.12.1 herein.

"**Disapproval Notice**" is defined in Section 2.2.3.

"**Disposal Plan**" is defined in Section 5.1.3.

"**DOES**" is the District of Columbia Department of Employment Services.

"**DOL**" is the United States Department of Labor.

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

"**Effective Date**" is the date first written above.

"**Environmental Claims**" is defined in Section 5.1.1.

"Environmental Laws" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976,

and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Event of Default**" is defined in Section 9.1.

"**Final Certificate of Completion**" means the certificate issued by District to Developer confirming Developer's Final Completion of the Project.

"Final Completion" means following Substantial Completion: (a) the completion of all Punch List Items or the establishment of an escrow account for the completion of such items; (b) the close-out of all construction contracts for the Project; and (c) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases or waivers of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project.

"**Final Project Budget and Funding Plan**" means the Project Budget and Funding Plan based on the Approved Construction Drawings that was submitted by Developer and approved by District prior to the Effective Date pursuant to the Agreement.

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

"**Force Majeure**" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, labor strikes, unusual delays in deliveries, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted or implemented after the Effective Date; provided, however, that with respect to any of the above acts or events despite reasonable business efforts in obtaining approval from, or changes ordered by, any governmental authority, that with respect to any of such acts or events: (i) such acts are not within the reasonable control of Developer, Developer's Agents or their Members; or (ii) such acts or events are not due to the fault or negligence of Developer, Developer's Agents, or their Members; (iii) such acts or events are not reasonably avoidable by Developer, Developer's Agents, or their Members or District in the event District's claim is based on a Force Majeure event, and (iv) such acts or events result in a delay in performance by Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer's or District's financial condition; (B) changes in real estate market conditions; or (C) the acts or

omissions of a general contractor, its subcontractors, or any other of Developer's Agents or its Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

"**Governmental Approvals**" are the approvals from the applicable Governmental Authorities obtained by Developer that are necessary or required for construction and occupancy of the Improvements, excavation permits, building permits, public space permits and such other permits, licenses or approvals as may be required by the applicable Governmental Authorities for the construction and occupancy of the Improvements.

"**Governmental Authority**" means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Project or the Property or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project, including, without limitation, WMATA and utility companies

"**Guarantor**" shall be a Person selected by Developer and approved by District pursuant to the Agreement.

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

"Hazardous Materials" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

"**Hotel Program**" means the construction on the Property of a mixed-use structure of approximately 170,000 sq. ft. above grade to be used as a hotel (approximately 200 keys) and condominiums (approximately 60 units), approximately 7,600 sq. ft. of ground floor retail, and approximately 132 underground parking spaces.

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

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

"**Indemnified Parties**" is defined in Section 5.1.1.

"**Institutional Lender**" shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a "REMIC" under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees' welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1 Billion in assets; (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least $1 Billion; or (xiv) a charitable organization regularly engaged in making loans secured by real estate.

"Land Records" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"**Lease**" means any lease of a portion of the Retail Portion 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 hotel flag or hotel operator change; and (vi) 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__.

"**Park Renovation**" means Developer's renovation of Milian Park located along Massachusetts Avenue to the immediate south of the Property, and Seaton Park located across Massachusetts Avenue to the west, in accordance with the Project Development Plan and the Approved Construction Drawings.

"**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 the Hotel Program on the Property, together with the Park Renovation, all in accordance with the Agreement 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, 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.

"**Residential Units"** means the for-sale branded residential units being developed as part of the Project.

"**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.

"**Retail Plan**" means the retail marketing plan and retail strategy that was submitted by Developer and approved by District prior to the Effective Date pursuant to the Agreement, and any modifications thereto approved pursuant to Section 5.7.

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

"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) a contract for sale of one or more condominium units that are a part of the Improvements in the ordinary course of business, which sale or series of related sales do not result in a bulk sale of the units; or (c) a lease of the Retail Portion of the Improvements 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. Developer shall maintain the Property during such pre-construction period in good repair and condition, free of rubbish and debris, and sightly in appearance. If, at any time prior to Commencement of Construction, Developer fails to maintain the Property in such good repair and condition, free of rubbish and debris, and sightly in appearance, District shall give Developer written notice of its failure to so maintain the Property, and shall have the right to enter the Property and perform all maintenance and clean-up of the Property deemed necessary by District, all at Developer's sole cost and expense, in the event Developer does not do so within thirty (30) days of its receipt of such notice from District. In such event, District shall be reimbursed for such maintenance and clean-up costs within five (5) Business Days after demand. Any sums not paid by Developer within five (5) Business Days after demand shall bear interest at the Default Rate until paid.

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 DEVELOPER'S SUBMISSION OF PROJECT TO ONE OR MORE CONDOMINIUM OR OTHER PROPERTY DIVISION REGIMES. Developer shall have the right to subject all or any portion of the Project to a condominium or other property division regime (including, with out limitation, a vertical subdivision), provided that District shall have the right to approve all documentation relating thereto, such approval not to be unreasonably conditioned, withheld or delayed.

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 sale of the Residential Units in the Project; (5) a report on the leasing of the retail space in the Project; (6) a current construction schedule for the Project; and (7) a schedule regarding the tenant improvements of the Retail Portion of the Project, which shall include the actual cost and square footage of the tenant improvements completed as of the date of such report

(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 commercial, residential, and retail purposes, subject to the provisions of this Covenant, to the extent applicable.

4.2 RETAIL SPACE.

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

4.2.2 Prohibited Retail Uses. Developer agrees that it shall not lease any space within the Retail Portion for the following uses: laundromat, check-cashing establishment, adult entertainment, adult video or adult bookstore.

4.2.3 Documentation. At any time prior to Final Completion, upon District's demand, Developer shall deliver to District, within ten (10) Business Days following such demand, a schedule of all leases with respect to the Retail Portion of the Project.

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 Residential Development and the Commercial Development. 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. If District exercises its right of re-entry contained in the Deed, this Covenant shall terminate as to the Property re-entered by District as of the date title to the Property vests in District; provided, however that the obligations of Section 5.1 and Article VII that were incurred by Developer prior to the termination shall survive such termination. Upon re-entry by District and termination of this Covenant, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Approved Construction Drawings and any Permits obtained, shall be automatically assigned to District, at the sole cost and expense of Developer, free and clear of all liens and claims for payment.

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; and

(d) if applicable, District may exercise its right of re-entry contained in the Deed.

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:

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

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:

TPC 5th & I PARTNERS LLC, a District of Columbia limited liability company

By: TPC 5TH & I Manager LLC, a District of Columbia limited liability company, its Managing Member

By: _____
Name: R. Donahue Peebles, Jr.
Title:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____, the Managing Member of TPC 5th & I Manager LLC a District of Columbia limited liability company, the Managing Member of TPC 5th & I Partners LLC, a District of Columbia 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

Exhibit E-2
Form of Construction and Use Covenant for the Affordable Housing Property

EXHIBIT E-2

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this "**Covenant**") is made as of the _____ day of _____, 20__ (the "**Effective Date**"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**") and (ii) MLK DC AH DEVELOPER, LLC, a Delaware limited liability company ("**Developer**").

RECITALS

R-1. Developer is the fee simple title owner of the real property located in Washington, D.C., known for tax and assessment purposes as Square____, Lot____ (the "**Property**"), more commonly known as 2100 Martin Luther King , Jr. Avenue, SE, Washington. DC, which Property is more fully described in **Exhibit A** attached hereto.

R-2. District, Developer and Developer's affiliate, TPC 5th & I Partners, LLC, a District of Columbia limited liability company ("**TPC**") entered into a Land Disposition and Development Agreement, dated as of _____, 20__ (the "**Agreement**"), pursuant to which Developer has agreed to construct a multifamily building on the Property devoted to affordable housing.

R-3. The Property shall consist of approximately sixty-one [61] affordable housing residential units developed in accordance with the Affordable Housing Development Plan and other provisions set forth in the Agreement, and in conformance with the Affordable Housing Covenant (the "**Affordable Housing Covenant**") executed by Developer and recorded in the Land Records of the District of Columbia as an encumbrance on the Property immediately after the recordation of this Covenant.

R-4. As required by the Agreement, Developer, for the benefit of District, agrees to construct the Project on the Property in accordance with the Approved Construction Drawings.

NOW, THEREFORE, the Parties hereto agree that the Property shall be subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS

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

"Acceptable Bank" means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short-term deposits or commercial paper of at least Aa3 (or equivalent) by Moody's Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor's Corporation.

"**ADUs**" means the affordable dwelling units, developed in accordance with the Affordable Housing Covenant and/or any applicable Inclusionary Zoning (IZ) Covenant required to be recorded in the Land Records against the Property (each being an "**ADU**.)

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

"**Affordable Housing Covenant**" is defined in the Recitals.

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

"**AMI**" means the most current area median income for the Washington DC/MD/VA metropolitan statistical area as of the date of determination, as designated by HUD.

"**ANC**" means an Advisory Neighborhood Commission.

"Applicable Law" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws, if applicable, relating to historic preservation and laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act, 40 U.S.C. § 276(a).

"**Approved Construction Drawings**" shall mean all Construction Drawings (as defined in the Agreement), including the Construction Plans and Specifications, approved by District pursuant to the Agreement, and any permitted changes thereto under this Covenant.

"Architect" means the architect of record, licensed to practice architecture in the District of Columbia, which Developer has selected and District has approved for the Project.

"Business Days" means Monday through Friday, inclusive, other than holidays recognized by the District government.

"**CBEs**" means a Person that has been issued a certificate of registration by DSLBD pursuant to D.C. Official Code §§ 2-218.01, *et seq.*

"**CBE Agreement**" is that agreement between Developer and DSLBD executed prior to the Effective Date, governing certain obligations of Developer under D.C. Official Code §§ 2-218.01, *et seq.* regarding participation by and contracting and employment of CBEs in the Project.

"Certificate of Occupancy" means a certificate of occupancy or similar document or permit that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof, including all ADU's.

"Commencement of Construction" means the time at which Developer has (i) executed a construction contract with its Contractor; (ii) given such Contractor a notice to proceed under said construction contract; (iii) caused such Contractor to mobilize on the Property equipment necessary for demolition, if any; and (iv) obtained any required Permits for demolition and sheeting and shoring and commenced demolition, if any, upon the Property pursuant to the Approved Construction Drawings. For purposes of this Covenant, the term "**Commencement of Construction**" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions, but "**Commencement of Construction**" shall include any material removal of Hazardous Materials from the Property by Developer in anticipation of excavation for construction.

"**Community Participation Program**" means the plan, attached hereto as **Exhibit C**, by which Developer shall apprise the immediate ANC and other community organizations of the status of the Project, which shall comply with Section 2.9.

"**Compliance Form**" is defined in Section 2.10.2.

"Concept Plans" are the design plans, submitted by Developer and approved by District prior to the Effective Date, which serve the purpose of establishing the major direction of the design of the Project.

"**Construction Consultant**" is the construction consultant retained by Developer for the Project and approved by District pursuant to the Agreement.

"Construction Plans and Specifications" mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project submitted by Developer and approved by District prior to the Effective Date which are used to obtain Permits, to prepare detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Project.

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

"**Contractor**" means _____, which Developer has selected and District has approved for the Project.

"**Control**" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to

elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners or Persons exercising similar authority with respect to the subject Person. A lender's right to foreclose or to accept a deed in lieu of foreclosure under a loan secured by the Property or any part thereof following a default under the documents evidencing or securing such loan or, an equity investor's right to obtain management control in the event Developer or its Affiliate defaults in its obligations under the Operating Agreement for Developer shall not constitute a change of "Control." The terms **"Control," "Controlling," "Controlled by"** or **"under common Control with"** shall have meanings correlative thereto.

"Council" means the Council of the District of Columbia.

"Covenant" is defined in the Preamble.

"DDOE" means the District of Columbia Department of the Environment.

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

"Design Development Plans" are the design plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape submitted by Developer and approved by District prior to the Effective Date.

"Development and Completion Guaranty" is that guaranty, of even date herewith, by the Guarantor, which binds Guarantor to develop and otherwise construct the Project in the manner and within the time frames required by the terms of the Agreement and this Covenant.

"Developer" means MLK DC AH Developer, LLC, and its permitted successors and assigns.

"Developer's Agents" mean Developer's agents, employees, consultants, contractors, and representatives.

"Developer's Certificate of Completion" means that certificate provided by Developer to District upon Substantial Completion, as required under Section 2.12.1 herein.

"Disapproval Notice" is defined in Section 2.2.3.

"Disposal Plan" is defined in Section 5.1.3.

"DOES" is the District of Columbia Department of Employment Services.

"DOL" is the United States Department of Labor.

"DSLBD" is the District of Columbia Department of Small and Local Business Development.

"Effective Date" is the date first written above.

"**Environmental Claims**" is defined in Section 5.1.1.

"Environmental Laws" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Event of Default**" is defined in Section 9.1.

"**Final Certificate of Completion**" means the certificate issued by District to Developer confirming Developer's Final Completion of the Project.

"Final Completion" means following Substantial Completion: (a) the completion of all Punch List Items or the establishment of an escrow account for the completion of such items; (b) the close-out of all construction contracts for the Project; and (c) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases or waivers of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project.

"**Final Project Budget and Funding Plan**" means the Project Budget and Funding Plan based on the Approved Construction Drawings that was submitted by Developer and approved by District prior to the Effective Date pursuant to the Agreement.

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

"**Force Majeure**" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, labor strikes, unusual delays in deliveries, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted or implemented after the Effective Date; provided, however, that with respect to any of the above acts or events despite reasonable business efforts in obtaining approval from, or changes ordered by, any governmental authority, that with respect to any of such acts or events: (i) such acts are not within the reasonable control of Developer, Developer's Agents or their Members; or (ii) such acts or events are not due to the fault or negligence of Developer, Developer's Agents, or their Members; (iii) such acts or events are not reasonably avoidable by Developer, Developer's Agents, or their Members or District in the event District's claim is based on a Force Majeure event, and (iv) such acts or events result in a delay in performance by Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer's or District's financial condition; (B) changes in real estate market conditions; or (C) the acts or omissions of a general contractor, its subcontractors, or any other of Developer's Agents or its Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

"**Governmental Approvals**" are the approvals from the applicable Governmental Authorities obtained by Developer that are necessary or required for construction and occupancy of the Improvements, excavation permits, building permits, public space permits and such other permits, licenses or approvals as may be required by the applicable Governmental Authorities for the construction and occupancy of the Improvements.

"**Governmental Authority**" means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Project or the Property or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project, including, without limitation, WMATA and utility companies

"**Guarantor**" shall be a Person selected by Developer and approved by District pursuant to the Agreement.

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

"Hazardous Materials" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and

drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

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

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

"**Indemnified Parties**" is defined in Section 5.1.1.

"**Institutional Lender**" shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a "REMIC" under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees' welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1 Billion in assets; (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least $1 Billion; or (xiv) a charitable organization regularly engaged in making loans secured by real estate.

"Land Records" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"**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

Exhibit F
Council Term Sheet

Exhibit G
First Source Agreement(s)

Exhibit H-1
Project Development Plan

Exhibit H-2
Affordable Housing Development Plan

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)*]

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the date first set forth above.

GRANTOR:

WITNESS:

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

_____

By: _____
Deputy Mayor for Planning and Economic Development

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

By: _____
Assistant Attorney General
Date: _____

DISTRICT OF COLUMBIA)
) ss:

I, _____, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, the Deputy Mayor for Planning and Economic Development, who is personally well known to me or satisfactorily proven to me to be the person who executed the foregoing and annexed Special Warranty Deed bearing date as of the __ of ____, 201_, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this _____ day of ____, 201_.

_____
Notary Public

My Commission Expires: _____

After recording, please return to:
Mark E. Alberta, Esq.
Assistant Attorney General
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue N.W.
Suite C-19
Washington, D.C. 20004

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:_____

Exhibit J
Schedule of Performance

Exhibit K
Right of Entry Agreement

Exhibit L-1
Project Funding Plan

Exhibit L-2
Affordable Housing Funding Plan

Exhibit M-1
Project Budget

Exhibit M-2
Affordable Housing Project Budget

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 [_____] 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 ("**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:

(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:

(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 guarantied, 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]

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 guarantied, 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]

Exhibit O
Form of Deposit Letter of Credit

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

ISSUER:
[Name of Bank]
[Bank Address]

Date of Issue: _____, 20__

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [Insert Number]

Beneficiary

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

Applicant

[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

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 Peebles 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

Total Uses			
Line Item	Amount	Amount/GSF	Amount/Unit [1]
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.**

(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

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:

(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;

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

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

waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

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

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

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

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

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

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

Equity Participation and Development Participation Quarterly Report Attachment

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

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

Signatures to follow

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

By: _____
Malik K. Edwards
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 Summers
Director

DEVELOPER, MLK DC AH Developer, LLC

By: _____
Lowell Plotkin
Authorized Signatory

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

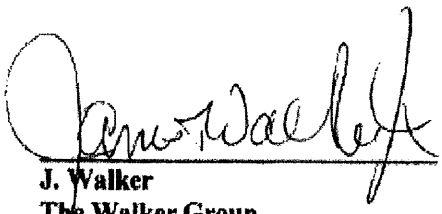
DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Robert Summers
Director

DEVELOPER, MLK DC AH Developer, LLC

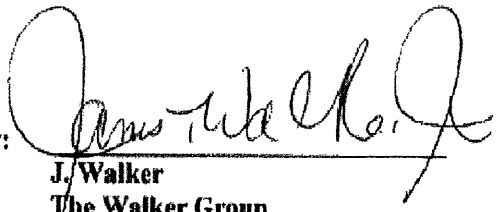
By: _____
Lowell Plotkin
Authorized Signatory

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") John A. Wilson Building, 1350 Pennsylvania Avenue, NW
Developer & Managing Member:	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	$	-
DCHFA Application Fee	$	-
DCHFA Construction Monitoring Fee	$	100,000
DCHFA Financing Fee	$	100,000
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	$	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
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**
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

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

Equity Participation and Development Participation Quarterly Report Attachment

BASIC INFORMATION

Reporting Quarter	
Report Submission Date *	
Project Name	
Address	

* This report is due no later than thirty days (30) after the end of each calendar-year quarter.

Name of Majority Owner	
Project Contact	
Telephone Number	
Email Address	
Anticipated Project Completion	

EQUITY PARTICIPATION INFORMATION

Non-Institutional/Purchaser's Equity Amount (Automatically Calculated)	$0

This number must match the Non-Institutional/Purchaser's Equity listed in Attachment 1. Any amendment to Attachment 1 must be pre-approved by DSLBD.

Minimum CBE Equity Participation Amount (20% of Non-Institutional/Purchaser's Equity)	

This number should be taken from Attachment 1.

Actual CBE Equity Participation Amount	

Add together dollar value of equity from ONLY CBEs (Column Labeled "Dollar Amount of Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter")

Sweat Equity Amount (No More than 5% of Non-Institutional/Purchaser's Equity)	
% Sweat Equity (No More than 5% of Non-Institutional/Purchaser's Equity)	#DIV/0!

List All Owners/Partners (Who Contributed Non-Institutional/Purchaser's Equity) From Every Reporting Quarter (DO NOT LIST BANK EQUITY)	CBE (Y/N)	Dollar Amount of Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter	% Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter (Automatically Calculated)	% Revenue Distribution This Reporting Quarter	Legal Status of Owners/Partners This Reporting Quarter (i.e. LLC or Inc.)	Description of Team Member (owners/partners) Activities
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			

DEVELOPMENT PARTICIPATION INFORMATION

Minimum CBE Development Participation Amount (20% of Development Fees)	

This number should be taken from Attachment 1.

Total Actual CBE Development Participation Amount	

Add together development fees paid ONLY TO CBEs (Column labeled "Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity")

List Each Owner, Partner, Team Member, Participant, or Any Other Individual or Entity Who Received Development Fees This Reporting Quarter	CBE (Y/N)	Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity	% of Development Fees Paid this Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity (Automatically Calculated)
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!

Total Development Fees Paid This Quarter (Automatically Calculated)	$0

CHANGES IN INFORMATION

Please list below any changes, from the prior reporting quarter, made to a partner or owner's equity, revenue or legal status this reporting quarter

List Each Owner and Partner With an Equity, Revenue or Legal Status Change	Type(s) of Change (Equity, Revenue or Legal Status)	Describe the Change (Equity = Changes in the amount of equity the owner/partner put into the project, Revenue = Changes in the percentage of revenue distribution to an owner/partner, Legal Status = Changes in the legal status of an existing owner/partner)

DSLBD
DEPT. OF SMALL & LOCAL BUSINESS DEVELOPMENT

QUARTERLY REPORT (Attachment 4)

Fiscal Year: Select ____ **Quarter** Select ____

1. Name: ____ **(Place 'X' by one)** ____ **is a Prime Contractor or** ____ **is the Developer**

2. Project: **(Place 'X' by one)** ____ **District Agency Contract:** **Agency Name** ____ **&** **Contract No.** ____ **OR** ____ **Private Project (Project Name):** ____

3. Place 'X' here, if target sector/multiplier apply to this reporting (i.e. Only for old CBE Agreements & MOUs): ____

4. Place 'X' here, if this is a Private Project Submitting SBE Subcontracting Plan with this Quarterly Report: ____

I ____ (Name) ____ (Title) of ____ (Company) swear or affirm this report is true and accurate.

____ (Signature) ____ (Date)

Date of Expenditure (Date check issued to Subcontractor)	SBE/CBE Subcontractor Company Name	Certification # (Must be active at the time Goods/Services Provided & Payment Made)	FEIN	Total # of DC Resident Employees	SBE (Y/N)	CBE (Y/N)	DBE (Y/N)	Description of Goods / Services Provided by Subcontractor using its own organization and resources	WE Included (Y/N)	Executed Subcontract Included or Previously Submitted (Y/N)	Total Subcontract Amount	If Lower Tier Subcontractor, portion of total subcontract dollar amount for goods/ services provided by the SBE/CBE Subcontractor using its own organization & resources	Actual Dollar Amount Spent this Quarter	Actual Dollar Amount Spent to Date
										$0.00		$0.00	$0.00	

DSLBD
DEPT OF SMALL & 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 <u>each SBE & CBE</u> listed in Part III c. is provided with this VVF: (✓ one)

☐ **YES** or ☐ Previously Provided on _____ Date - Proceed;

☐ **NO – STOP THIS VVF WILL <u>NOT</u> BE ACCEPTED, AND <u>NO CREDIT</u> 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: <u>Provide DETAILED Description of Scope of Work Provided by SBE/CBE Company:</u>

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 $ _____.

<u>ACKNOWLEDGEMENT</u>

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 Vender 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 Vender 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 Vender Verification Form properly will result in <u>no credit</u> 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.

<u>NOTARIZATION</u>

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 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 **$135,200,000**. The CBE Minimum Expenditure is therefore **$_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

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

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;

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

	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 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 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):

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

Equity Participation and Development Participation Quarterly Report Attachment

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

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

Signatures to follow

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

By: _____
Malik K. Edwards
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 Summers
Director

DEVELOPER, TPC 5th & I Partners, LLC

By: _____
Lowell Plotkin
Authorized Signatory

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")
	John A. Wilson Building, 1350 Pennsylvania Avenue, NW
Developer & Managing Member:	TPC 5th & I Partners LLC
Local Ownership Partners:	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

Robert M. Summers

Date: _____

Approved by: Robert Summers, Director, Department of Small and Local Business Development

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

Equity Participation and Development Participation Quarterly Report Attachment

BASIC INFORMATION

Reporting Quarter	
Report Submission Date *	
Project Name	
Address	

* This report is due no later than thirty days (30) after the end of each calendar-year quarter.

Name of Majority Owner	
Project Contact	
Telephone Number	
Email Address	
Anticipated Project Completion	

EQUITY PARTICIPATION INFORMATION

Non-Institutional/Purchaser's Equity Amount (Automatically Calculated)	$0

This number must match the Non-Institutional/Purchaser's Equity listed in Attachment 1. Any amendment to Attachment 1 must be pre-approved by DSLBD.

Minimum CBE Equity Participation Amount (20% of Non-Institutional/Purchaser's Equity)	

This number should be taken from Attachment 1.

Actual CBE Equity Participation Amount	

Add together dollar value of equity from ONLY CBEs (Column Labeled "Dollar Amount of Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter")

Sweat Equity Amount (No More than 5% of Non-Institutional/Purchaser's Equity)	
% Sweat Equity (No More than 5% of Non-Institutional/Purchaser's Equity)	#DIV/0!

List All Owners/Partners (Who Contributed Non-Institutional/Purchaser's Equity) From Every Reporting Quarter (DO NOT LIST BANK EQUITY)	CBE (Y/N)	Dollar Amount of Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter	% Non-Institutional/Purchaser's Equity (Including Sweat Equity) This Reporting Quarter (Automatically Calculated)	% Revenue Distribution This Reporting Quarter	Legal Status of Owners/Partners This Reporting Quarter (i.e. LLC or Inc.)	Description of Team Member (owners/partners) Activities
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			
			#DIV/0!			

DEVELOPMENT PARTICIPATION INFORMATION

Minimum CBE Development Participation Amount (20% of Development Fees)	

This number should be taken from Attachment 1.

Total Actual CBE Development Participation Amount	

Add together development fees paid ONLY TO CBEs (Column labeled "Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity")

List Each Owner, Partner, Team Member, Participant, or Any Other Individual or Entity Who Received Development Fees This Reporting Quarter	CBE (Y/N)	Amount of Development Fees Paid This Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity	% of Development Fees Paid this Reporting Quarter to Owner, Partner, Team Member, Participant, or Any Other Individual or Entity (Automatically Calculated)
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!
			#DIV/0!

Total Development Fees Paid This Quarter (Automatically Calculated)	$0

CHANGES IN INFORMATION

Please list below any changes, from the prior reporting quarter, made to a partner or owner's equity, revenue or legal status this reporting quarter

List Each Owner and Partner With an Equity, Revenue or Legal Status Change	Type(s) of Change (Equity, Revenue or Legal Status)	Describe the Change (Equity = Changes in the amount of equity the owner/partner put into the project, Revenue = Changes in the percentage of revenue distribution to an owner/partner, Legal Status = Changes in the legal status of an existing owner/partner)

DSLBD
DEPT. OF SMALL & LOCAL BUSINESS DEVELOPMENT

QUARTERLY REPORT (Attachment 4)

Fiscal Year: Select Quarter Select

1. Name: (Place 'X' by one) is a Prime Contractor or is the Developer

2. Project: (Place 'X' by one) District Agency Contract: Agency Name & Contract No. OR Private Project (Project Name):

3. Place 'X' here, if target sector/multiplier apply to this reporting (i.e. Only for old CBE Agreements & MOUs):

4. Place 'X' here, if this is a Private Project Submitting SBE Subcontracting Plan with this Quarterly Report:

I (Name) (Title) of (Company) swear or affirm this report is true and accurate.

(Signature) (Date)

Date of Expenditure (Date check issued to Subcontractor)	SBE/CBE Subcontractor Company Name	Certification # (Must be active at the time Goods/Services Provided & Payment Made)	FEIN	Total # of DC Resident Employees	SBE (Y/N)	CBE (Y/N)	DBE (Y/N)	Description of Goods / Services Provided by Subcontractor using its own organization and resources	WE Included (Y/N)	Executed Subcontract Included or Previously Submitted (Y/N)	Total Subcontract Amount	If Lower Tier Subcontractor, portion of total subcontract dollar amount for goods, services provided by this SBE/CBE Subcontractor using its own organization & resources	Actual Dollar Amount Spent this Quarter	Actual Dollar Amount Spent to Date
										$0.00		$0.00	$0.00	

DSLBD
DEPT OF SMALL & 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 Vender 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 Vender 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 Vender 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,

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: $16,000,000

EMPLOYER CONTRACT AMOUNT: $16,000,000

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

RECEIVED
NOV 13 2014
BY:

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://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

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 F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	See page 9				
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

NAME OF EMPLOYEE	CURRENT DISTRICT RESIDENT √Please Check	WARD
Chris Leng Smith	☐	
	☐	
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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 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 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,

Drew Hubbard
Associate Director
First Source Program

Enclosure

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

RECEIVED
NOV 13 2014
BY:

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: 202-785-9869
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

EMPLOYER INFORMATION
EMPLOYER NAME: TPC 5th & 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@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://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 F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	See page 9				
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

NAME OF EMPLOYEE	CURRENT DISTRICT RESIDENT √Please Check	WARD
Chris Leng Smith	☐	
	☐	
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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.