

**LAND DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between the

DISTRICT OF COLUMBIA

and

**[DEVELOPER ENTITY]**

for the

DISPOSITION AND DEVELOPMENT OF  
CERTAIN PARCELS OF LAND LOCATED AT

1923 VERMONT AVENUE, N.W., AND 912 U STREET, N.W.  
(Square 361, Lot 827 and Lot 833)

Dated \_\_\_\_\_, 2015

**TABLE OF CONTENTS  
(MOST CURRENT FORM OF LDA)**

	<b>Page</b>
ARTICLE 1	DEFINITIONS: INCORPORATION OF RECITALS .....1
1.1	Definitions .....1
1.2	Rules of Construction .....11
1.3	Other Definitions .....11
1.4	Recitals .....11
ARTICLE 2	SALE OF PROPERTY; PROJECT DEPOSIT; CONDITION OF PROPERTY .....12
2.1	Conveyance of Property; Purchase Price; Project Deposit.....12
2.2	Condition of Property .....13
2.3	Title .....15
2.4	Risk of Loss .....16
2.5	Condemnation .....16
2.6	Service Contracts and Leases .....17
2.7	Use of a Portion of the Property Museum .....17
ARTICLE 3	REPRESENTATIONS AND WARRANTIES .....17
3.1	Representations and Warranties of District .....17
3.2	Representations and Warranties of Developer .....18
ARTICLE 4	APPROVAL OF CONSTRUCTION DRAWINGS; OTHER SUBMISSIONS; APPROVAL OF GUARANTOR .....19
4.1	Construction Drawings .....19
4.2	District Review and Approval of Construction Drawings.....20
4.3	Changes In Construction Drawings; Government Required Changes .....21
4.4	Progress Meetings.....22
4.5	Approval of Guarantor.....22
4.6	Other Submissions .....23
4.7	Construction Consultant .....24
4.8	Completion Bond Requirements.....25
ARTICLE 5	CONDITIONS TO CLOSING .....25
5.1	Conditions Precedent To Developer’s Obligation To Close .....25
5.2	Conditions Precedent To District’s Obligation To Close .....26
ARTICLE 6	CLOSING .....28
6.1	Closing Date .....28
6.2	Deliveries At Closing .....29
6.3	Recordation of Closing Documents; Closing Costs .....31

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 7	
DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF PROJECT; CONSTRUCTION AND USE COVENANT; AFFORDABLE HOUSING COVENANT .....	31
7.1	Obligation To Construct Project.....31
7.2	Application for Planned Unit Development .....32
7.3	Issuance of Permits.....32
7.4	Site Preparation.....32
7.5	Affordable Housing Requirements.....33
7.6	Opportunity for CBEs.....33
7.7	Employment of District Residents; First Source Agreement .....33
7.8	Davis Bacon; Living Wage Act.....33
7.9	Green Building.....33
7.10	Community Benefits.....34
ARTICLE 8	
DEFAULTS AND REMEDIES .....	34
8.1	Default .....34
8.2	District Remedies in the Event of a Developer Default .....35
8.3	Developer Remedies in the Event of a District Default .....35
8.4	No Waiver By Delay; Waiver.....36
ARTICLE 9	
FINANCIAL PROVISIONS .....	36
9.1	Project Funding Plan; Project Budget.....36
9.2	Debt Financing.....37
ARTICLE 10	
ASSIGNMENT AND TRANSFER .....	38
10.1	Assignment .....38
10.2	Transfer of Membership Interests.....38
10.3	No Unreasonable Restraint.....38
ARTICLE 11	
INSURANCE OBLIGATIONS; INDEMNIFICATION .....	38
11.1	Insurance Obligations.....38
11.2	Indemnification.....40
ARTICLE 12	
NOTICES .....	40
12.1	To District.....40
12.2	To Developer .....40
ARTICLE 13	
MISCELLANEOUS .....	41
13.1	Party in Position of Surety With Respect to Obligations .....41
13.2	Conflict of Interests; Representatives Not Individually Liable .....41
13.3	Survival; Provisions Not Merged With Deed.....41

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
13.4 Titles of Articles and Sections.....	41
13.5 Law Applicable; Forum for Disputes .....	42
13.6 Entire Agreement; Recitals; Exhibits .....	42
13.7 Counterparts.....	42
13.8 Time of Performance .....	42
13.9 Successors and Assigns .....	42
13.10 Third Party Beneficiary .....	43
13.11 Waiver of Jury Trial.....	43
13.12 Further Assurances .....	43
13.13 Modifications and Amendments.....	43
13.14 Severability .....	43
13.15 Anti-Deficiency Limitation; Authority.....	43
13.15 Time of The Essence; Standard of Performance .....	43
13.17 No Partnership .....	44
13.18 Each Party To Bear Its Own Costs .....	44
13.19 Discretion.....	44
13.20 Force Majeure.....	44
13.21 Joint Preparation .....	44

## LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), is made effective for all purposes as of the \_\_\_\_ day of \_\_\_\_\_, 2015, between (i) **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, ("**District**"), and (ii) \_\_\_\_\_ ("**Developer**") (individually a "**Party**" and collectively, the "**Parties**").

### RECITALS:

R-1 District owns the real property located at 1923 Vermont Avenue, N.W., and 912 U Street, N.W., in the District of Columbia and known for taxation and assessment purposes as, respectively, Lot 827 in Square 361 (the "**School Parcel**") and Lot 833 in Square 361 (the "**Vacant Parcel**") (collectively, the "**Property**"), as further described in Exhibit A.

R-2 District desires to convey the Property to Developer through a ground lease of the portion of the School Parcel containing the existing improvements known as the Grimke School Building and its parking lot (the "**Ground Lease Parcel**"), and a sale of the Vacant Parcel and the remaining portion of the School Parcel located between the eastern side of the Grimke School Building and 9 ½ Street N.W. (the "**Fee Parcel**"), 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's agreement to convey and lease, as applicable, the Property to Developer as set forth in this Agreement, Developer shall grant to District the design review rights over the Project (defined below) set forth in this Agreement.

R-5 Developer and District further desire and intend that Developer renovate and/or construct the Project on the Property without any District of Columbia financing or assistance, and operate the affordable housing component of the Project and in the CBE (defined below) involvement in the Project without any financing or assistance from the District of Columbia; provided that this shall not preclude any grants or financing funded to occupants of the Project, including without limitation arts funding projects, or loan programs benefitting residential buyers.

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 and Developer do hereby agree as follows, to wit:

**ARTICLE I**  
**DEFINITIONS; INCORPORATION OF RECITALS**

1.1 Definitions and Recitals. For the purposes of this Agreement, the terms and definitions contained in the Recitals are incorporated herein, and the following capitalized terms shall have the meanings ascribed to them below:

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

“African American Civil War Memorial Museum” or “AACWMM” is the museum operated by the African American Civil War Memorial Freedom Foundation, a District of Columbia not for profit 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.

“Affordable Housing Covenant” is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as Exhibit B, to be recorded in the Land Records against the portion of the Property to include the ADUs at the Closing pursuant to Applicable Law and this Agreement.

“Affordable Housing Plan” is attached hereto as Exhibit C.

“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 of the Affordable Housing 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 or land use, including, without limitation, the approval by the District of Columbia Zoning Commission of any PUD Application or zoning variance sought by Developer on the Property, but expressly excluding the Permits.

“**Approved Construction Drawings**” is defined in Section 4.2.1.

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

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

“**CBE Agreement**” is that certain Certified Business Enterprise Acknowledgement Form, between Developer and DSLBD, governing certain obligations of Developer under D.C. Law 20-0108 with respect to the Project, attached hereto as Exhibit D.

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

“**Closing**” is the consummation of the transactions involving the purchase/lease 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.

“**Commencement of Construction**” means the time at which Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary to commence (A) the renovation of the Grimke School Building, construct no less than 10,000 square feet of space for the use of the AACWM Museum on the Ground Lease Parcel, and (B) the excavation and development of the Vacant Parcel (collectively, “Phase 1”); (iv) obtained any required Permits for demolition if any, excavation, sheeting and shoring, and (v) commenced excavation on the Vacant Parcel and the renovation of the historic Grimke School Building pursuant to the Approved Construction Drawings. For purposes of this Agreement, the term “Commencement of Construction” does not mean: (X) portions of the Project which are not in Phase 1 such as the seven (7) town home Residential Units, or (Y) site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for development of the Project thereon or the investigations of environmental conditions, but “Commencement of Construction” shall include any material removal of Hazardous Materials from the Property by Developer in anticipation of excavation for construction.

“**Community Benefits**” is defined in Section 7.10.

“**Community Participation Programs**” is defined in Section 4.6.4.

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

“**Concept Plans**” are the design plans, submitted by Developer and approved by District as of the Effective Date herein, which serve the purpose of establishing the major direction of the design of the Project, which are attached as **Exhibit H**.

“**Construction and Use Covenant**” is that certain Construction and Use Covenant between District and Developer, in the form attached hereto as **Exhibit E**, to be recorded in the Land Records against the Property 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 Developer to District, and approved by District, to the extent required by, and in accordance with the standards set forth in, Article IV 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 in accordance with the approved Design Development Plans and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of 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. 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.

“**Council Term Sheet**” means the term sheet attached as **Exhibit L** 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 Developer from one or more Institutional Lenders to fund the costs set forth in the Project Budget, other than any Equity Investment.

“**Deed**” means the special warranty deed conveying the Property to Developer in the form attached hereto as **Exhibit I**.

“**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, including its approximate size and layout. 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**” is defined in the Preamble, a joint venture whose members are Affiliates of Roadside Development LLC and Sorg Architects.

“**Developer Default**” is defined in Section 8.1.1.

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

“**Development and Completion Guaranty**” means a guaranty to be executed by Guarantor and that complies in all material respects with the terms of Section 4.5.1, in the form attached hereto as Exhibit F, which shall bind Guarantor to develop and otherwise construct the Project in the manner and within the time frames required by the terms of this Agreement, the Deed and the Construction and Use Covenant.

“**Development Plan**” means Developer’s plan to: (a) on the Ground Lease Parcel, renovate the existing improvements known as the Grimke School Building so that they contain no less than 10,000 square feet of space to be used by AACWMM, approximately 12,667 square feet of arts space including without limitation studios and performance areas and ancillary space associated with the foregoing arts space and approximately 25,628 square feet of commercial office space, , (b) on the Fee Parcel, within the Vacant Parcel, construct a building containing approximately thirty five (35) Residential Units (approximately 25,900 square feet) and subject to the Affordable Housing Covenant; (c) on the Fee Parcel, within the School Parcel, construct approximately seven (7) town home Residential Units (approximately 15,120 square feet), and (d) the Project shall also include approximately 3,320 square feet of retail and at least 43 parking spaces for the Property.

“**Disapproval Notice**” is defined in Section 4.2.3.

“**Disposal Plan**” is defined in Section 2.2.1(b).

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

“**District Default**” is defined in Section 8.1.3.

“**District Delays**” is defined in Section 4.2.4.

“**DOES**” is the District of Columbia Department of Employment Services.

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

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

or (c) any other entity providing EB-5 Financing that is approved by the District. in its sole discretion.

“**EB-5 Financing**” means (a) any financing provided by an EB-5 Lender. or (b) any financing that is comparable and/or supplemental to the EB-5 financing obtained by Affiliates of Developer to fund any portion of the redevelopment of the Property.

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

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

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

“**Fee Parcel**” is defined in Section 2.1.1.

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

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

“**First Source Agreement**” is that agreement between Developer and DOES, attached hereto as Exhibit G, governing certain obligations of Developer 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, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event: (i) is not within the reasonable control of Developer, Developer’s Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer’s Agents, or its Members; (iii) is not reasonably avoidable by Developer, Developer’s Agents, or its Members or District in the event District’s claim is based on a Force Majeure event; and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer’s financial condition; (B) changes in market conditions such that development of the Project is no longer practicable under the circumstances; or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer’s Agents or Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

“**Green Building Act**” means 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.*, as may be amended, and the regulations promulgated therewith.

“**Ground Lease**” is defined in Section 2.12 herein.

“**Guarantor**” shall be \_\_\_\_\_ and any successor(s) approved by District pursuant to Section 4.5.

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

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

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

“Letter of Credit” means an irrevocable, unconditional, automatically renewed, stand-by letter of credit on a form and from a bank reasonably acceptable to District and substantially in the form attached hereto as Exhibit J.

“Managing Member” means \_\_\_\_\_ . *[Identity of MM to be determined]*

“Material Change” means (i) any change in size or design from the Approved Construction Drawings substantially affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or a diminution or increase of square footage in the Project in excess of five percent (5%) from the most recent Approved Construction Drawings; (ii) any changes in exterior finishing materials substantially affecting architectural appearance from those shown and specified in the then most recent Approved Construction Drawings; (iii) any change in number of parking spaces by ten percent (10%) or more from the then most recent Approved Construction Drawings, (iv) any substantial change in landscape planning and design or changes in size or quality of exterior pavement, exterior lighting and other exterior site features from the then most recent Approved Construction Drawings; (v) any change that reduces the number of ADUs; or (vi) any change that reduces the total residential square footage of the Project by more than ten percent (10%); (vii) any material reduction in the level of interior finishes below market rate standards from the then most recent Approved Construction Drawings as it relates to the ADUs; (viii) any changes in design and construction of the Project from the Approved Construction Drawings requiring approval by a governmental authority (other than District’s approval under this Agreement); and (ix) any change requiring an amendment to the PUD, if applicable.

“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 and leasehold estates under the laws of the District of Columbia.

“Other Submissions” is defined in Section 4.6.

“Outside Closing Date” is defined in Section 6.1.

“Party” when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and 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 (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Development Plan and this Agreement.

“Permitted Exceptions” is defined in Section 2.3.2.

“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 those Improvements on the Property, and the development and construction thereof in accordance with the Approvals, the Development Plan, this Agreement, the Approved Construction Drawings, and the 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 Deposit”** has the meaning given it in Section 2.1.2(a).

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

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

**“PUD”** is the planned unit development for the Project, as approved by the Zoning Commission.

**“PUD Application”** has the meaning given to it in Section 7.2.

“Purchase Price” has the meaning given in Section 2.1.1(a).

“Residential Units” means the residential dwelling units to be constructed on the in accordance with the Development Plan and this Agreement, including the ADUs.

“Resolution” is defined in the Recitals.

“Resubmission Period” is a period of thirty (30) days commencing on the day after Developer receives a 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” is defined in Section 4.6.3.

“Review Period” is defined in Section 4.2.2.

“ROE” is defined in Section 2.2.1(a).

“Schedule of Performance” means that schedule of performance, attached hereto as Exhibit K and incorporated herein, and which may be amended by agreement of the Parties, setting forth the timeline for design, development, construction, and completion of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule, as amended in accordance with this Agreement, shall be attached to the Construction and Use Covenant.

“Second Notice” means that notice given by 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 and mutually acceptable to Developer and District.

“Settlement Statement” is the “HUD-1” settlement statement prepared by Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

“Studies” is defined in Section 2.2.1.

“Subdivision” is defined in 5.1.1(f)

“Transfer of Membership Interests” is defined in Section 10.2.

“UST Act” is defined in Section 2.2.3.

“UST Regulations” is defined in Section 2.2.3.

“Zoning Commission” means the District of Columbia Zoning Commission.

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 II CONVEYANCE OF PROPERTY; PROJECT DEPOSIT; CONDITION OF PROPERTY

2.1 Sale of a Portion of the Property; Purchase Price; Ground lease; Project Deposit.

2.1.1 Sale of a Portion of the Property.

(a) The Fee Parcel. 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 Fee Parcel containing the Vacant Parcel and the portion of the School Parcel located between the eastern side of the Grimke School Building and 9 ½ Street N.W., as legally described in **Exhibit A** attached hereto.

(b) Purchase Price. The purchase price of the Fee Parcel is Twenty Five Thousand Dollars (\$25,000) (the “**Purchase Price**”).

2.1.2 Ground Lease.

Subject to and in accordance with the terms of this Agreement, District shall lease to Developer the Ground Lease Parcel containing the portion of the School Parcel containing the existing improvements known as the Grimke School Building and its parking lot, as legally described in **Exhibit A** attached hereto, pursuant to an unsubordinated, “triple net” ground lease (the “**Ground Lease**”) in the form attached hereto as **Exhibit P**, which shall be memorialized in the Land Records of the District of Columbia through the recordation of a Memorandum of Ground Lease at Closing. The Ground Lease shall have the term of NINETY-NINE (99) YEARS, which term shall commence as of the date of Closing. The ground rent payable by Developer to District with respect to the Ground Lease shall be a nominal amount of

\$1 dollar annually (the “**Ground Rent**”) in consideration for Developer’s renovation of the Grimke School Building. Developer’s construction of space in the Grimke School Building to a warm lit shell condition for the AACWM (a grantee of the District in the amount of \$3,400,000 million (Reprogramming No. 20-0202, July 3, 2014)) for the AACWM Museum’s design and renovation of the space (tenant-outfit), as well as programming) . and the construction and provision of arts and/or performance space uses on the Ground Lease Parcel for a period of no less than ten (10) years with one (1), five (5) year, option to renew said option, to be paid in accordance with the terms of this Agreement as shall be incorporated into the form of Ground Lease attached herein, and upon mutual agreement by the Parties executed by the same at Closing.

### 2.1.3 Project Deposit.

(a) Developer had delivered to the District a deposit Letter of Credit in the amount of **Twenty Five Thousand Dollars (\$25,000.00)** (the “**Project Deposit**”) upon the execution of this Agreement, entered into by and between Developer and the District in connection with the Property, and District shall return the same at Closing.

(b) The Project Deposit may be drawn by District in accordance with this Agreement. The Project Deposit is not a payment on account of and shall not be credited against the Purchase Price; rather, the Project Deposit shall be held by District to be used as security to ensure Developer’s compliance with this Agreement and may be drawn on by District in accordance with the terms of this Agreement. The Project Deposit and any replacement Letters of Credit provided under this Agreement is, or shall be, in the form attached hereto as **Exhibit J**. Notwithstanding any provision herein to the contrary, District shall return the Project Deposit to Developer at Closing. If at any time prior to Closing, a 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 Letter of Credit extending the expiration date of the 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 Letter of Credit, the same shall be considered a Developer Default and District may draw upon the Project Deposit.

## 2.2 Condition of Property.

### 2.2.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) 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 uncured 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 Agreement, by and between Developer and District (the "ROE"), attached hereto as Exhibit M and incorporated herein, as if such terms, conditions and agreements were expressly set forth herein. 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 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 as defined herein, 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 after discovery. 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 and if Closing occurs, 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 until after Closing. Within seven (7) Business Days 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) Notwithstanding anything to the contrary contained herein, in the event of a termination of this Agreement prior to Closing, neither Developer nor any of Developer's Agents shall have any continuing liability or obligations regarding the Disposal Plan or the discovery, 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 proprietary 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, as applicable to the Ground Lease Parcel, shall survive Closing or the earlier termination of this Agreement. This provision, as applicable to the Fee Parcel, shall terminate at Closing. The parties acknowledge and agree that “proprietary” information shall mean information which relates to the economic terms of this transaction between the District and Developer; but shall not pertain to typical due diligence matters relating to the Property or the terms of any contract, lease or other agreement entered into by Developer with parties other than the District with respect to the Property.

(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 XI.

2.2.2 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 [Soil – Urban Land and Urban Land- Chillum complex, 0 to 8 percent slopes]. 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.

2.2.3 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**”). Further, 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.

2.2.4 From the Effective Date and until Closing, the District, shall have the right to undertake, using reasonable efforts, the following activities in a manner it deems appropriate in its sole discretion, at the Grimke School Building: (i) without impacting water service to the AACWM, shut off and drain water service to the Grimke School Building; (ii) close and nail shut all windows; and (iii) clean and/or remove standing water and mold in the basement that may be present as of the Effective Date. The District shall not be liable for any claims, losses, expenses or damages whatsoever arising out of or in any way related to the exercise of the enumerated rights herein from any cause or causes, including, but not limited to negligence, errors, omissions, strict liability or breach of warranty.

2.2.5 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 SET FORTH IN SECTION 2.3.2, SECTION 2.3.3, SECTION 3.1 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.

### 2.3 Title.

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

2.3.2 At Closing, as provided for by the express terms of this Agreement, the 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; and (vi) real property taxes and water and sewer charges or other governmental or utility assessments which are 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.

2.3.3 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, except as expressly required by Applicable Law or as permitted by this Agreement or a de minimus change which does not prevent the District from complying with its obligations hereunder or impact the Development Plan or Developer's obligations or liabilities related thereto in any respect.

2.3.4. Developer may, at or prior to Closing, notify District in writing of any 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 commence and diligently pursue a cure to Developer's objections to title prior to the date of Closing 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 (but in no event later than the Outside Closing Date). If District is unable to effect a cure prior to Closing, Developer shall have the following options: (i) to accept the conveyance of the Property including any matter objected to by Developer which District is unable to cure, 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, the Project Deposit shall be returned to Developer and thereafter neither 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, or (iii) to permit the District, if the District so elects to undertake a post-closing cure in its sole and absolute discretion, to effect the cure post-Closing. In the event, 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 prior to Closing, Developer shall, within five (5) 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) or accept a commitment from the District under clause (iii). In the event Developer does not notify District within such five (5) Business Day period, then Developer shall be deemed to have elected to accept the conveyance under clause (i).

2.4 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.

2.5 Condemnation.

2.5.1 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.

2.5.2 Total Taking. In the event of a taking of the entire Property prior to Closing, the Project Deposit shall be returned to Developer by District, this Agreement shall terminate, and the Parties shall be released from any and all rights, obligations and liabilities hereunder (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement). District shall have the right to receive 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.

2.5.3 Partial Taking. In the event of a partial taking of the Property 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 will return the Project Deposit to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to collect all condemnation proceeds, 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. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall negotiate in good faith a reduction in the Purchase Price to reflect the reduction in the total square footage of the Project that can be developed on the Property and thereafter be deemed to have elected to proceed to Closing with respect to the portions of the Property not subject to the condemnation. In no event shall District (as the seller hereunder, as opposed to as the condemning authority) have any liability or obligation to make any payment to Developer with respect to any such condemnation. In the event that within forty-five (45) days after the date of receipt by District 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, and the termination provisions of this Section 2.5.3 shall apply.

2.6 Service Contracts and Leases; Temporary Licensees. District 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, 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. District shall not enter into any such licenses without the prior written consent of Developer.

2.7 Exclusive Use of a Portion of the School Parcel by AACWMM Museum. Developer acknowledges the cultural and historical support for Recital 4 herein and its importance to the District, as further evidenced by the enactment of District of Columbia law, the "African American Civil War Memorial Freedom Foundation, Inc., Museum Development Act of 2013", requiring the recordation in the District of Columbia Land Records, of an exclusive use covenant of space no less than 10,000 square feet prior to a conveyance of the School Parcel, and Developer shall in accordance with District of Columbia law, continue to provide no less than 10,000 square feet of space in the School Parcel to the AACWMM on or before Final Completion of the renovation of the Grimke School Building. Prior to Closing, Developer shall enter into a sublease agreement or similar agreement with ACCWMM regarding the use of the no less than 10,000 square feet of space in the School Parcel upon completion of Developer's construction of a warm lit shell for the ACCWMM space in the Grimke School Building.

### |ARTICLE III REPRESENTATIONS AND WARRANTIES

#### 3.1 Representations and Warranties of District.

3.1.1 District hereby represents and warrants to Developer 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 District, subject to expiration of the authority granted in the Resolution. Upon the due execution and delivery of the Agreement by Developer, and subject to the expiration of the authority to convey the Property granted in the Resolution, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms. Other than the Permitted Exceptions, District has not conveyed any right to purchase the Property, or any other right to or interest in the Property to any Person other than Developer, nor does any Person other than Developer have any right, title or interest in or to the Property.

(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 the sale of the Property.

(c) There is no litigation, arbitration, condemnation proceeding or administrative proceeding, 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, 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) 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.

(e) There are no leases, contracts, license agreements or other contractual agreements of any nature currently in effect with respect to the Property other than the lease agreements with AACWMM disclosed in Section 2.7.

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 Developer upon learning of same.

### 3.2 Representations and Warranties of Developer.

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

(a) Developer is a \_\_\_\_\_, duly formed and validly existing and in good standing, and has full power and authority under the laws of \_\_\_\_\_ to conduct the business in which it is now engaged. Neither Managing Member nor any Person owning directly or indirectly any interest in Developer or Managing Member is a Prohibited

Person. A full and complete set of all organizational documents of Developer and Managing Member of Developer in connection with Closing, have heretofore been delivered to District on the Effective Date, or shall be delivered at some other time and date, prior to Closing, but no later than one hundred and eighty (180) days after the Effective Date.

(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 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 or Managing Member 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 actual 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 purchase 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 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 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of six (6) months. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

**ARTICLE IV**  
**APPROVAL OF CONSTRUCTION**  
**DRAWINGS; OTHER SUBMISSIONS; APPROVAL OF IDENTITY OF GUARANTOR**

#### 4.1 Construction Drawings.

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the Construction Drawings for the Project 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.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to the issuance of any Permit by a District agency, Developer 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 applicable zoning requirements (which may include any pending or approved PUD for the Project) 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 Developer's submission of all Construction Drawings to District, the Architect shall certify (with standard professional language reasonably acceptable to District) that the Project has been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.1.3 Non-Material Changes. District and Developer recognize that, during the course of the construction of the Project, changes may be necessary to the Construction Plans and Specifications 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, however, District shall have no right to disapprove any Construction Drawings so long as they are consistent with the Development Plan and the Concept Plans and are consistent with the information exchanged in Progress Meetings and otherwise 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 (the ten (10) Business Day review period 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 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 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 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. If District fails to notify Developer in writing of its approval or disapproval of such amended Construction Drawing within the Review Period, 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 and delays caused by District (“**District Delays**”), Developer shall complete the Project in accordance with the Schedule of Performance. If 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 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, as the 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 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 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 that are required by any governmental authority; provided however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the governmental authority requiring such element or change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such governmental authority in seeking such reasonable modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the applicable Construction Drawing or Approved Construction Drawing. Developer 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 Developer shall hold periodic progress meetings ("**Progress Meetings**"), during which meetings Developer and designated representatives of District and other District staff shall coordinate the development and construction of the Project, including preparation and submission of the Construction Drawings as well as the review of such Construction Drawings by District.

4.5 Guarantor.

4.5.1 Approval of Guarantor. The Development and Completion Guaranty required pursuant to this Agreement shall be Guarantor (defined above) from one or more Persons approved by District in District's reasonable 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 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.

4.5.2 Updated Submissions. No later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its reasonable discretion, that a material adverse change in the financial condition of the Guarantor has occurred that impacts, or could threaten to impact, the Guarantor's ability to perform under the Development and Completion Guaranty. Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute Guarantor and request District's approval of the same in accordance with the terms of Section 4.5.1 above, 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 Guaranty shall comply in all material respects with the terms of the form of Development and Completion Guaranty attached hereto as Exhibit F.

4.5.4 Guaranty Required by Primary Institutional Lender. District, in the exercise of its sole and absolute discretion, may decide to acknowledge that the obligation of Guarantor to provide the Development and Completion Guaranty hereunder may be satisfied by the delivery by Guarantor of a guaranty of development and completion to the primary Institutional Lender, with District named as a beneficiary thereunder, which guaranty of development and completion must be acceptable to District in its reasonable discretion. The rights of District and such primary Institutional Lender to enforce such guaranty of development and completion (or guaranties, if separate guaranties of development and completion are offered by Guarantor to each of District and such primary Institutional Lender) may be governed by an intercreditor agreement between District and such primary Institutional Lender, which intercreditor agreement must be acceptable to District in its sole and absolute discretion.

4.5.5 Material Adverse Change in Financial Condition of Guarantor. In the event that there is material adverse change (as reasonably determined by District) in the Guarantor's financial condition from the financial condition of the Guarantor at the time of District approval the Guarantor Developer shall deliver a replacement guaranty from a substitute guarantor approved by District with terms and conditions consistent with this Article and within a commercially reasonable period.

4.6 Other Submissions. Prior to Closing, Developer shall submit the following to District for review and approval in District's sole but reasonable discretion ("**Other Submissions**");

4.6.1 Development Plan. Developer shall provide District with any proposed changes in the Development Plan, which shall be subject to District approval in District's sole and absolute discretion except, other than changes in the uses of the Property as may be required by a construction and use covenant, changes required by governmental authorities in connection with the PUD or any zoning variance process.

#### 4.6.2 District's Approval of Professionals: Contracts.

(a) Any Person that 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 4.6.2(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.

(c) Upon District's request, Developer shall provide to District the contracts with any Person required to be approved by District pursuant to the foregoing provisions of this Section 4.6.2.

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 component of the Project, which shall be subject to District approval in District's reasonable discretion (the "**Retail Plan**").

4.6.4 Community Participation Program. No later than ninety (90) days after the Effective Date, Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. The Community Participation Program 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 shall submit such documentation of each meeting to District and shall otherwise include a summary of Developer's activities with respect to, and in furtherance of, the Community Participation Program at each Progress Meeting. District hereby agrees that the Community Participation Program may be maintained on Developer's website and delivered to District electronically.

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 Developer and provide a written response thereto, within fifteen (15) 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 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 Other Submission.

4.6.6 Changes to Other Submissions. No Material Changes to any Other Submission shall be made without District's prior written approval. If Developer desires to make any Material Changes to any Other Submission. Developer 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 fifteen (15) Business Days.

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

4.8 Completion Bond Requirements. Developer shall require its general contractor for the Project to obtain a payment and performance bond in form and substance acceptable to District, naming District as a named beneficiary. Developer shall deliver to District an original of such payment and performance bond prior to Commencement of Construction of the Project.

## |ARTICLE V CONDITIONS TO CLOSING

### 5.1 Conditions Precedent To Developer's Obligation To Close.

5.1.1 The obligations of Developer to consummate 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 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;

(f) as of the Closing Date, the District shall have subdivided the Property so it is possible to convey the Fee Parcel to Developer as a legally divisible parcel (“Subdivision”), as further described in Exhibit A; provided, however, that the Parties mutually agree on the detailed boundaries of the Fee Parcel to be subdivided prior to Closing which shall be substantially as set forth on Exhibit A, absent mutual agreement of the District and Developer; and

(g) 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 obligation of Developer hereunder, Developer shall have the option, in its sole discretion, to: (i) waive such condition(s) and proceed to Closing hereunder; (ii) other than with respect to the conditions set forth in Section 5.1.1 that have not been met due to Force Majeure, terminate this Agreement by delivering written notice of such termination to District on or prior to the Closing Date, in which event the Project Deposit shall be returned to Developer and 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 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. In the event such conditions precedent have not been satisfied by the end of the thirty (30) day period, provided the same is not the result of Developer’s failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect, except for those provisions that expressly survive termination of this Agreement. Notwithstanding anything set forth above to the contrary, if any such failed condition is a District Default hereunder, then Developer may exercise its remedies in Section 8.3.

## 5.2 Conditions Precedent To District’s Obligation To Close.

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

(a) Developer shall have performed all of its 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 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 to District in support of such representations and warranties, including, without limitation, updated and current organizational documents, shall be delivered by Developer to District prior to Closing;

(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 Plan and all Construction Drawings for the Project shall have been approved as Approved Construction Drawings in their entirety pursuant to Article IV;

(f) all Other Submissions shall have been approved in their entirety pursuant to Article IV;

(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 Approved Construction Drawings and the Construction and Use Covenant;

(h) Developer shall not be in default under the terms of the First Source Agreement with DOES;

(i) Developer shall not be in default under the terms of the CBE Agreement with DSLBD;

(j) Developer shall have obtained all Approvals necessary to accomplish the Project (including, if applicable, the approval of the PUD Application by the Zoning Commission);

(k) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.

(l) Developer shall have provided District with a resolution adopted by Developer authorizing its purchase of the Property and the performance by Developer of its obligations under this Agreement;

(m) Developer shall have obtained all Permits to commence renovation of the Grimke School Building and excavation of the Vacant Parcel, but shall not be required to have applied for such Permits which are normally obtained during the course of construction of the Project, such as elevator permits and landscaping permits or as may be provided for in the Construction and Use Covenant;

(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 shall have secured District's approval and shall have secured all Debt Financing and Equity Investment necessary to renovate the Grimke School Building, construct no less than 10,000 square feet of space for the use of the AACWM Museum in the Grimke School Building to a warm lit shell condition, develop the Vacant Parcel, or Phase 1, and to fully perform all development and construction obligations contained in the Construction and Use Covenant with respect to Phase 1 of the Project as defined herein and as may be further expanded in the Construction and Use Covenant by mutual agreement of the Parties prior to Closing;

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

(q) Developer shall have executed a construction contract with its general contractor for the 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 4.8.3 or, if a material adverse change has occurred, District has approved a substitute guarantor pursuant to Section 4.8.3; and

(s) Developer shall have provided to District a copy of the sublease or similar agreement between Developer and the AACMM regarding the use of no less than 10,000 square feet within the School Parcel for a museum.

5.2.2 Failure of Condition. 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 Developer, 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 by delivering written notice of such termination to Developer on or prior to the Closing Date, in which event the Project Deposit shall be retained by District and 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 Developer 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. In the event such conditions precedent have not been satisfied by the end of the thirty (30) day period, 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) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect, except for those provisions that expressly survive termination of this Agreement. Notwithstanding anything set forth above to the contrary, if any such failed condition is a Developer Default hereunder, then District may exercise its remedies in Section 8.2.

## ARTICLE VI CLOSING

6.1 Closing Date and Outside Closing Date. Developer and District shall consummate Closing upon satisfaction of all conditions to Closing, but no later than the Closing Date shown on the Schedule of Performance, subject only to Force Majeure, or as otherwise expressly provided herein ("**Closing Date**"). If District or Developer has not met any condition to Closing due to Force Majeure, and there is no continuing uncured District Default or Developer Default under this Agreement, the Closing Date shall be extended for the period of the Force Majeure, but in no event shall the Closing be held after the date that is **TWO (2) YEARS AFTER DATE OF COUNCIL RESOLUTION** as is shown on the Schedule of Performance (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.

### 6.2 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 in recordable form to be recorded in the Land Records against the Property;
- (c) the Affordable Housing Covenant in recordable form to be recorded in the Land Records against the Property;
- (d) 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

(e) 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 and a Memorandum of Ground Lease in recordable form for recordation in the Land Records against the Property;

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

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

(d) the fully executed Development and Completion Guaranty;

(e) any funds required by the Settlement Statement to be delivered at Closing;

(f) any documents required to close on all of the Debt Financing for Phase 1 as defined in this Agreement until Closing and as thereafter defined in the Construction and Use Covenant;

(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) required Permits necessary for commencement of Phase 1 and (ii) Approvals for the Project;

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

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

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

(l) the following documents evidencing the due organization and authority of Developer and 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 for Developer issued by the District of Columbia;

(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 Managing Member in connection with this Agreement and development of the Project; and

(iii) if requested by District, an opinion of Developer's counsel that Developer and Managing Member is validly organized, existing and in good standing in the District of Columbia, that Developer and Managing Member has 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 Managing Member has 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 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 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;

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

(n) 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.

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

6.3.2 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, and (v) all of Settlement Agent's fees and costs.

6.3.3 All real estate and personal property taxes and all utilities and other operating expenses, if any, applicable to the Property being acquired by Developer shall be

prorated between District and Developer as of the Closing Date (i.e.. District shall be responsible for all such amounts payable with respect to the period up to, but not including the Closing Date, and Developer shall be responsible for all such amounts payable with respect to the period from and after the Closing Date) based on estimates of the amounts that will be due and payable on the next payment date, unless final readings or invoices therefor as of the Closing Date shall have been obtained, in which event such final readings shall be utilized as the basis for adjustment. All items to be apportioned and adjusted pursuant to this Section 6.3.3 shall be prorated as of midnight of the day immediately preceding the Closing Date, based on the actual number of days of the month which shall have elapsed as of the Closing Date and the actual number of days in the month and a three hundred sixty-five (365) day year.

**ARTICLE VII**  
**DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF PROJECT; PUD APPLICATION; CONSTRUCTION AND USE COVENANT; AFFORDABLE HOUSING 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 attached hereto as Exhibit K, as such Schedule of Performance may be modified from time to time in accordance with the terms of this Agreement, subject only to Force Majeure and District Delays. Developer's failure to perform its obligations in accordance with the Schedule of Performance prior to Closing shall constitute a Developer Default under this Agreement, which shall entitle District to terminate this Agreement and draw on the Project Deposit in its full amount without notice or opportunity to cure. Developer's failure to perform its obligations in accordance with the Construction and Use Covenant post-Closing shall constitute a default thereunder and in accordance with the terms thereof. 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, Developer shall cause the Development and Completion Guaranty to be executed by 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.

7.2 Application for Planned Unit Development. Developer shall obtain all necessary Approvals to construct the Project, and may prepare and file an application to the Zoning Commission for approval of the Project as a planned unit development (the "**PUD Application**") on behalf of District as the owner of the Property, which PUD Application may be submitted by Developer either before or after the Effective Date, in Developer's sole discretion. Developer may also pursue a zoning variance. Any PUD Application may be in the name of District, as applicant, and shall be subject to prior approval by District. In this regard, Developer shall submit a copy of any proposed PUD Application to District for its review and approval prior to submission of the PUD Application to the Zoning Commission. District shall have thirty (30) days to review and comment on the PUD Application; provided, however, District's approval of the PUD Application shall not be unreasonably withheld, conditioned or delayed if the PUD Application is consistent in all material respects with the Development Plan and Concept Plans described in/attached to this Agreement. District acknowledges that the PUD Application may

seek relief from the requirements of Inclusionary Zoning from the appropriate District agency. District shall cooperate, at no cost to District, with Developer in connection with all such zoning requests or applications submitted by Developer to appropriate District agencies. shall join such requests or applications (as landowner) as reasonably requested by Developer.

7.3 Issuance Of Permits. Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within 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, prior to Closing, upon the request of the District from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing (email shall be deemed a "writing" for purposes of this Section 7.3, on a periodic basis to District, not more frequently than once every thirty (30) days, and, after Closing, in accordance with the terms the Construction and Use Covenant.

7.4 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 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.

7.5 Affordable Housing Requirement. Developer will comply with all requirements of the Disposition of District Land for Affordable Housing Amendment Act of 2014 (D.C. Act 20-485) and will also comply with the requirements of District's Inclusionary Zoning program, if and to the extent applicable to the Project. As of the Effective Date, Developer has delivered 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. Floor plans depicting the ADUs for the Property shall also be presented to District for review and approval prior to Closing. At Closing, Developer shall execute the Affordable Housing Covenant, which shall reflect the Affordable Housing Plan and the Development Plan. District agrees that Developer may retain ownership of the ADUs and lease the ADUs to qualified tenants, whether or not Developer sells the balance of the Residential Units as individually-owned condominium units.

7.6 Opportunity for CBEs. In cooperation with District, Developer shall comply with the terms and conditions set forth in the CBE Acknowledgement form as required by DSLBD, including the equity and development participation requirements of D.C. Code §2.218.49a., and the CBE Agreement.

7.7 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, Developer recognizes 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 agrees to enter into the First Source Agreement prior to Closing, with DOES that shall, among other things, require Developer to: (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, all in accordance with such First Source Employment Agreement 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.

7.8 Davis Bacon; Living Wage Act. If applicable, Developer 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, Developer shall cause its general contractor to comply with all requirements under the "*Living Wage Act of 2006*", D.C. Official Code §§ 2-220.01 *et seq.* The general contractor 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.

7.9 Green Building. Developer shall construct the Project in accordance with the *Green Building Act of 2006*, D.C. Official Code §§ 6-1451.01, *et seq.*, as amended from time to time to the extent applicable to the different components of the Project. Additionally, Developer shall use commercially reasonable efforts to achieve LEED Gold certification or equivalent for the Project as such standards are applicable to the components of the Project.

7.10 Community Benefits. Developer shall provide a "**Community Benefits**" as part of the PUD Process if applicable, or to the District for its reasonable review and approval prior to Closing.

## |ARTICLE VIII DEFAULTS AND REMEDIES

### 8.1 Default.

8.1.1 Default by Developer. Developer shall be in default under this Agreement if Developer 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 District (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 shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, Developer 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 the Closing beyond the Outside Closing Date.

8.1.2 It shall be deemed a default by Developer if Developer fails to meet the milestones on or before the dates set forth for such milestones in the Schedule of Performance, after notice of such default by District and a thirty (30) day opportunity to cure the default, subject to Force Majeure. Developer may seek extension of the milestone dates from District, which may be granted or withheld by District in its sole but reasonable discretion.

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 (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.

## 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 under this Agreement prior to Closing, District may elect to:

(a) terminate this Agreement and, as liquidated damages, draw on the Project Deposit in the full amount, 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, 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;

(b) cure any default, the reasonable out-of-pocket costs of which shall be paid by Developer, and if not paid by Developer, District shall be entitled to draw on the Project Deposit for partial reimbursement of District’s reasonable out-of-pocket costs incurred to cure the default; or

(c) pursue injunctive or other equitable relief.

8.2.2 Remedies After Closing. In the event of Developer Default under this Agreement after Closing, District shall be entitled to all the remedies set forth in the Deed, Construction and Use Covenant, Affordable Housing Covenant, and Development and Completion Guaranty, including, without limitation, the right of District to re-enter and take possession of the Property under the Deed.

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 Developer be liable for any consequential, punitive, or special damages.

8.3 Developer 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 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, or (b) pursue specific performance or other equitable relief.

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

8.3.3 General. The remedies of Developer provided in this Section 8.3 shall be the sole and exclusive remedies of 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 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 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 IX FINANCIAL PROVISIONS

9.1 Project Funding Plan; Project Budget.

9.1.1 Project 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 and affordable housing financing), which plan is attached hereto as Exhibit N (such plan, as may be modified from time to time in accordance with this Agreement being the “**Project Funding Plan**”).

9.1.2 Project 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 O (such budget, as may be modified from time to time in accordance with this Agreement being the “**Project Budget**”).

9.1.3 Final Project Budget and Funding Plan. Within sixty (60) days after Developer submits the Approved Construction Documents for the Project, Developer shall provide District with a revised Project Budget and Project Funding Plan and such supporting documentation as District may reasonably request. Developer shall further modify the Project Budget and Project 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 and Project Funding Plan submitted pursuant to clause (ii), such modified Project Budget and Project Funding Plan shall be the “**Final Project Budget and Funding Plan**”.

9.1.4 Modifications. After Closing, 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 remains in full force and effect and Developer notifies District of such modifications in accordance with the Construction and Use Covenant. Notwithstanding anything else in this subsection, the Final Project Budget and Funding Plan 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; provided, however, that in the event the Final Project Budget and Funding Plan is modified without District’s approval, 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, 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 and absolute discretion.

9.2.2 Bona Fide Indebtedness. The Debt Financing obtained in connection with Closing and construction of the 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 Final Project Budget; 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; and (ii) the amount thereof, together with all other funds available to Developer, shall be sufficient to complete construction of the Project.

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, such documents as District may reasonably request, including, but not limited to, copies of:

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

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

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing and a description of the portion of the Property for which such documents will encumber.

## ARTICLE X ASSIGNMENT AND TRANSFER

10.1 Assignment. Prior to Closing, 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 Agreement, or delegate its obligations under this Agreement, except to an entity that is Controlled by Managing Member, without District's prior written approval, which may be granted or denied in District's sole discretion. After Closing, Developer may assign the Property (or portions thereof) in accordance with the Construction and Use Covenant and the Deed, but in any event assignment shall not be permitted prior to the District's issuance of a Certificate of Final Completion.

10.2 Transfer of Membership Interests. Prior to Closing, neither Developer nor any Member of Developer (including any successors in interest of Developer or its 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, except to an entity that is Controlled by Managing Member, without District's prior written approval, which may be granted or denied in District's sole discretion; provided, however, no membership interest shall be held by a Prohibited Person ("**Transfer of Membership Interests**"). After Closing, Developer may conduct a Transfer of Membership Interests in accordance with the Construction and Use Covenant and the Deed, but in any event, a Transfer of Membership Interests shall not be permitted prior to District's issuance of a Certificate of Final Completion.

10.3 No Unreasonable Restraint. Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. 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.

**ARTICLE XI**  
**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 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 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.

(b) Workers' Compensation Insurance - At all times after Closing 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.

(c) 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, and structural, electrical and mechanical engineers, with a deductible acceptable to District.

(d) 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.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above except Workers' Compensation Insurance. 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-VIII 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 to provide written notice to District, by overnight carrier or U.S. Certified 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 shall indemnify, defend, and hold harmless District and District's agents and employees 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 or omissions of Developer, its Members, agents, employees, or contractors that arise after the Effective Date; 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 negligence or willful misconduct of District as determined by a court of competent jurisdiction, or that arose prior to the Effective Date. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

## ARTICLE XII NOTICES

12.1 To District. Any notices given under this Agreement shall be in writing and delivered by U.S. 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: Marc Bleyer, Project Manager—Grimke School

With a copy to:

Office of the General Counsel for DMPED  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attn: General Counsel for DMPED—Grimke School

12.2 To Developer. Any notices given under this Agreement shall be in writing and delivered by U.S. Certified Mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

*[Developer]*  
c/o Roadside Development LLC  
1730 Rhode Island Avenue, NW, Suite 512  
Washington, DC 20036  
Attention: Mr. Todd Weiss and Ms. Lauren Aiello

With a copy to:

Holland & Knight LLP  
800 17<sup>th</sup> Street NW  
Suite 1100  
Washington DC 20006  
Attention: Tara A. Scanlon, Esq.

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; 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 XIII MISCELLANEOUS

13.1 Party in Position of Surety With Respect to Obligations. Developer, for itself and its 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 the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its 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 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 member, partner, employee, officer, director, or shareholder of Developer or Managing Member 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.

13.3 Survival; Merger 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 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 Agreement 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 Agreement 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.

13.6 Entire Agreement; Recitals; Exhibits.

13.6.1 This Agreement (including the Exhibits annexed hereto and made part hereof including, without limitation, the Council Term Sheet), and any document delivered pursuant to this Agreement collectively contain all the agreements and understandings between District and Developer 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 The Recitals of this Agreement are incorporated herein by this reference and are made a substantive part of the agreements between the Parties.

13.6.3 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. Execution and delivery 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, District holiday, or day in which the Government of the District of Columbia is officially closed for business 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 and Developer, and where the term "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 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 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 that is legal, valid, and enforceable.

13.15 Anti-Deficiency Limitation: Authority.

13.15.1 Though no financial obligations on the part of District are anticipated, Developer acknowledges 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 Developer acknowledges and agrees that any unauthorized act by District is void. It is Developer's 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 District.

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 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 nor any charge made therefor.

13.20 Force Majeure. Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default of their obligations under this Agreement, in the event of forced delay in the performance of such obligations is 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 Party in writing within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by such Force Majeure event.

13.21 Joint Preparation. District and Developer each acknowledge 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 Developer 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: \_\_\_\_\_

Brian T. Kenner  
Deputy Mayor for Planning and Economic Development

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

Reviewed for legal sufficiency:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office of the General Counsel to the  
Deputy Mayor for Planning and Economic Development

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

**DEVELOPER:**

Witness:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Form of Affordable Housing Covenant
Exhibit C	Affordable Housing Plan
Exhibit D	CBE Agreement
Exhibit E	Form of Construction and Use Covenant
Exhibit F	Form of Development and Completion Guaranty
Exhibit G	First Source Agreement
Exhibit H	Concept Plans
Exhibit I	Deed
Exhibit J	Form Letter of Credit
Exhibit K	Schedule of Performance
Exhibit L	Council Term Sheet
Exhibit M	Right of Entry
Exhibit N	Project Funding Plan
Exhibit O	Project Budget
Exhibit P	Form of Ground Lease

**EXHIBIT A**

Legal Description of Property to be inserted prior to Closing.  
Draft description attached.

**EXHIBIT B**

Form of Affordable Housing Covenant

**EXHIBIT C**  
Affordable Housing Plan

EXHIBIT D  
CBE Agreement

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

**EXHIBIT F**

Form of Development and Completion Guaranty

**EXHIBIT G**  
First Source Agreement

EXHIBIT H  
Concept Plans

**EXHIBIT G**  
First Source Agreement

**EXHIBIT H**  
Concept Plans

**EXHIBIT I**  
Form of Deed

**EXHIBIT J**  
Form Letter of Credit

**EXHIBIT K**  
Schedule of Performance

**EXHIBIT L**  
Council Term Sheet

EXHIBIT M  
Right of Entry

**EXHIBIT N**  
Project Funding Plan

**EXHIBIT O**  
Project Budget

**EXHIBIT P**  
Form of Ground Lease

**AFFORDABLE HOUSING COVENANT**

THIS AFFORDABLE HOUSING COVENANT (the "**Covenant**") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**"), by \_\_\_\_\_, a "**Developer**") having an address of \_\_\_\_\_, for the benefit of the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**").

**RECITALS**

R-1. District is the fee simple owner of certain real property, known as Lot 833 in Square 0361, located in the District of Columbia as further described in **Exhibit A** (the "**Property**").

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

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

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

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

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

**ARTICLE I  
DEFINITIONS**

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

**Affordability Period:** is defined in Article X.

**Affordability Requirement:** is the requirement that no less than 30% of the Residential Units to be contained in the Project are to be Affordable Units and allocated as follows: (i)

[ ] of the Affordable Units shall be reserved for Households with an Annual Household Income at or below [ ] AMI and (ii) [ ] of the Affordable Units shall be reserved for Households with an Annual Household Income at or below [ ] AMI. [Add additional categories as appropriate.]

**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.

**Conflict:** is defined in Section 12.11.

**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.

**District**: is identified in the preamble of this Covenant.

**Federal Affordability Restrictions**: is defined in Section 12.11.

**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:

<b>Household Size</b>	<b>Household Adjustment Factor</b>
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	1.5	.75
2 Bedroom	3	.9
3 Bedroom	4.5	1.05

**Over-Income Tenant:** as defined in **Section 4.6.5**.

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE II  
AFFORDABILITY REQUIREMENT**

**2.1 Requirement of Affordability.** Developer shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

**2.2 Affordable Unit Standards and Location.**

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

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

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

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

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

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

**2.3 Marketing Affordable Units.**

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

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

2.3.3 *Conversion to Rental Units.* In the event Developer elects, in accordance with Section 2.3.1, to market Affordable Units in the Property as units for sale to Qualified Purchasers and subsequently determines to convert some or all of the Affordable Units from For Sale Affordable Units to Rental Affordable Units, such units shall be subject to the Affordability Requirements.

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 Unit 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 and charge market-rate rent, upon which Developer shall designate another unit as a Rental Affordable Unit in accordance with Section 4.6.6.

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

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

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

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

location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE V SALE OF AFFORDABLE UNITS

**5.1 Sale of For Sale Affordable Units.** In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser.

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

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

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

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

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household’s eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household’s Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * HAF)$ . Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). Examples of the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household’s approved mortgage, and adding all applicable property taxes, 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 without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules).

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

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

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

## **ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES**

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

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

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

## ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

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

## ARTICLE VIII MORTGAGES

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

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

8.3 **Default of Mortgage and Foreclosure.**

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

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

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

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

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

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

**ARTICLE IX  
AMENDMENT OF COVENANT**

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

**ARTICLE X  
AFFORDABILITY PERIOD**

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the Affordability Period. For the purposes of this Covenant, the “**Affordability Period**” shall mean the life of the building constructed as part of the Project. 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. 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, 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:

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.

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

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

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

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

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

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

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

*[Signatures on Following Pages]*

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

WITNESS

DEVELOPER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

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

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015:

WITNESS

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Approved for Legal Sufficiency:  
Office of the General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby  
certify that \_\_\_\_\_, on behalf of the District of Columbia,  
personally appeared before me in said jurisdiction, and, being personally known to me (or  
satisfactorily proven) to the person whose name is subscribed to the foregoing Affordable  
Development Covenant, and that s/he, in such capacity, being authorized to do so, executed the  
foregoing instrument for the purposes therein contained, and acknowledged the same to be the  
act and deed of the District of Columbia.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, D.C.

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

**EXHIBIT A**  
**Legal Description of Property**

**[See attached]**

## EXHIBIT B

### Rental Affordable Unit Lease Rider

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

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

**EXHIBIT C**

**Affordable Unit Index**

## SCHEDULE 1

### Examples of Calculating Maximum Annual Household Income and Minimum Annual Household Income [Assuming 2015 AMI of \$109,200 for a family of four]

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

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

A1: **Yes.** The Household makes less than the Maximum Annual Household Income for the 80% AMI Affordable Unit (\$69,888).

$$\$109,200 \text{ (the 2015 AMI)} * 0.8 * 80\% = \$69,888$$

#### Minimum Annual Household Income for Rental Affordable Units:

Q2: If the monthly Housing Cost for an 80% AMI Rental Affordable Unit is \$1,638, 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 \$51,726.

$$\$1,638 * 12 / 38\% = \$51,726$$

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 \$0.61 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	925	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 (\$71,400 in 2015) at current real estate tax rates (\$0.85 per \$100 in 2015).
- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at [www.fhfa.gov](http://www.fhfa.gov) plus a one and a half percent (1.5%) cushion. For this example, assume an average rate of 3.77%. After adding the 1.5% cushion, the rate for calculation of the Maximum Sale Price would be 5.27%.
- 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  $MRP = P \times (F) + V$  ("Formula"), where:

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

**SBE SUBCONTRACTING, AND EQUITY AND DEVELOPMENT PARTICIPATION,  
STATUTORY REQUIREMENTS ACKNOWLEDGEMENT FORM**

I Todd Weiss [Name], Member [Title] of Roadside Development, LLC (an affiliate of which will be member of SPE to be formed for the project) [Prime Contractor/ Developer] acknowledge that the Grimke School (Project Name, Contract Number) project is subject to the SBE subcontracting, and equity and development participation requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (the "Act") (D.C. Law 20-108; D.C. Official Code § 2-218.01 et seq.). I further acknowledge that this form is just a summary of the Act, and that the project must comply with all relevant sections of the Act, and not just the provisions outlined below.

**SBE Subcontracting Requirements**

- Pursuant to section 2-218.46 of the Act, all construction & non-construction **Government-assisted projects** (agency issued contracts & private projects that received any type of District subsidy) over \$250,000, shall require 35% subcontracting to Small Business Enterprises (SBE) certified by the Department of Small and Local Business Development (DSLBD), unless waived by DSLBD.
  - Agency Issued Contracts – 35% of the total amount of the agency issued contract shall be subcontracted to SBEs.
  - Private Projects with District Subsidy – 35% of the total project costs (development costs) shall be subcontracted to SBEs. The 35% requirement is not limited to the amount of the District subsidy.
- If there are insufficient qualified SBEs to fulfill the 35% subcontracting requirement, the requirement may be satisfied by subcontracting 35% to Certified Business Enterprises (CBE) certified by DSLBD; provided, that all reasonable efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontract work.

**SBE Subcontracting Plan**

- A SBE Subcontracting Plan listing all subcontracts, between the **Beneficiary** and SBEs/CBEs; and between SBE/CBE and Non-CBE Subcontractors and all lower tier SBE/CBE Subcontractors must be submitted for this project.
  - For Agency Solicitations - the SBE Subcontracting Plan must be submitted to the agency with the bid/proposal for the bid/proposal to be considered responsive.

- For Agency Multi-year/ Options/ Extensions - submit SBE Subcontracting Plan to agency before next year/ option/ extension exercised.
  - No multiyear contracts or extended contracts which are not in compliance with the subcontracting requirements at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.
- For Private Projects - submit revised SBE Subcontracting Plans to DSLBD, agency project manager and Office of the District of Columbia Auditor (ODCA), with each quarterly report.
- For Agency Contracts for Design-Build Projects - the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the amount of the contract including total design and build costs) is required before entering into a guaranteed maximum price or contract authorizing construction.

### **Special Requirements**

- Each construction and non-construction Government-assisted project for which a CBE is selected as a Beneficiary, shall require the CBE perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with CBEs.
- Each construction and non-construction Government-assisted project for which a CBE is utilized to meet the 35% subcontracting requirement, shall require the CBE perform at least 35% of the contracting effort with its own organization and resources.
- Each construction and non-construction Government-assisted project of **\$1 million or less** for which a CBE is selected as a Beneficiary shall include a requirement that the CBE perform at least 50% of the on-site work with its own workforce.

### **Special Exemption**

- If the Beneficiary is a CBE and will perform the *ENTIRE* government-assisted project with its own organization and resources and NOT subcontract any portion of the government-assisted project, then the CBE is not required to subcontract 35% to SBEs.

### **Special Requirements for Certified Joint Venture Beneficiaries**

- Each construction and non-construction Government-assisted project for which a certified joint venture is selected as a Beneficiary shall include a requirement that the CBE member of the joint venture perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with CBEs.

### **Mandatory Meetings**

- The Beneficiary of a Government-assisted project **shall meet with DSLBD and ODCA within 10 days of the execution of this Acknowledgment Form.**
- The Beneficiary shall provide DSLBD a copy of the Government-assisted project's budget at the initial meeting.
- Thereafter, the Beneficiary of a Government-assisted project shall meet on an annual basis with DSLBD and ODCA to provide an update of the subcontracting plan for utilization of SBEs and CBEs.

### **Compliance Reporting Requirements**

- The Beneficiary of a Government-assisted project shall submit the following reports to DSLBD, the agency contracting officer, project manager, and ODCA:
  - SBE Subcontracting Plan;
  - Completed Quarterly Reports;
  - Completed Vendor Verification Forms; and
  - Each fully executed subcontract with each subcontractor listed on the SBE Subcontracting Plan (required to receive credit towards the 35% SBE subcontracting requirement).
- The Beneficiary can receive the vendor verification forms, and any other compliance forms at the initial meeting with DSLBD.

### **Equity & Development Participation**

- In all development projects conducted pursuant to a disposition under D.C. Official Code § 10-801, authorizing the sale, conveyance, lease for greater than 20 years, exchange, or other disposition of certain real estate in the District of Columbia no longer required for public purposes, **Small Investors, Disadvantaged Investors, or Certified Equity Participants** shall invest a minimum of 20% of the total sponsor equity, excluding debt financing, mezzanine financing, or other equity contributions by limited or institutional investors.
- For each Government-assisted **project involving development**, in addition to complying with the general 35% SBE subcontracting requirements, at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to SBEs, and if there are insufficient qualified SBEs to completely fulfill this requirement, then the requirement may be satisfied by contracting 20% of that dollar volume to any qualified CBEs; provided, that all

reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall development goods and services work.

- Equity and development participation shall not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code of 1986, or other not-for-profit entity. And shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to the effective date of the Act.

### **Enforcement and Penalties**

- If a CBE Beneficiary that received points or a price reduction performs less than 35% of the total contracting effort with its own organization and resources, then the CBE shall be subject to the penalties and fines of section 2-218.63 of the Act.
- If the CBE member of a certified joint venture Beneficiary that received points or a price reduction, performs less than 50% of the total contracting effort with its own organization and resources, then the joint venture and the CBE shall be subject to the penalties and fines of section 2-218.63 of the Act.
- For any subcontracting plan required by law, the Beneficiary shall be deemed to have breached the subcontracting plan for utilization of SBEs or CBEs in the performance of a contract if the Beneficiary:
  - Fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner;
  - Submits a monitoring or compliance report, or other required subcontracting information containing a materially false statement; or
  - Fails to meet the subcontracting requirements of section 2-218.46 of the Act.
- A Beneficiary that is found to have breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines, pursuant to section 2-218.63 of the Act.
- A Beneficiary that fails to comply with the equity and development requirements of the Act shall be subject to the imposition of penalties, including monetary fines, pursuant to section 2-218.63 of the Act.
- If DSLBD determines that a Beneficiary has failed to use commercially reasonable best efforts to meet the subcontracting requirements of section 2-218.46 of the Act, DSLBD shall assess a civil penalty equal to 10% of the dollar volume of the contract that the Beneficiary was required but failed to subcontract. The civil penalty will be in addition to any other penalties or causes of action that may be available.

## **Pertinent DEFINITIONS**

**Agency** means: an agency, department, office, board, commission, authority, or other *instrumentality of the District government*, with or without legal existence separate from that of the District government.

**Beneficiary** means: a business enterprise that is the prime contractor or developer on a government-assisted project.

**Certified Equity Participant** means: a single-purpose legal entity created to participate in real estate development projects and includes members that are small investors or disadvantaged investors.

**Disadvantaged Investor** means:

(A) A disadvantaged business enterprise pursuant to D.C. Official Code § 2-218.33; or

(B) A District-domiciled economically disadvantaged individual as determined by regulations promulgated by DSLBD.

**Government-assisted project** means:

(A) A *contract* executed by an agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;

(B) A *project* funded in whole or in part by District funds;

(C) A *project* that receives a loan or grant from a District agency;

(D) A *project* that receives bonds or notes or the proceeds from bonds or notes issued by a District agency, including tax increment financing or payment in lieu of tax bonds or notes, but not including industrial revenue bonds;

(E) A *project* that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, such as a religious institution or nonprofit corporation; or

(F) A *development project* conducted pursuant to a disposition under section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

**Project involving development** means: a private development or redevelopment of real property improvements on land disposed of by, or leased from, the District and private development or redevelopment of real property improvements to which the District has contributed through a grant (or other public subsidy for which the District does not anticipate re-payment, such as a cash contribution, tax increment financing, payment in lieu of taxes, or similar programs or agreements) at least 15% of the

development costs or \$500,000, whichever is less; but *does not* include improvements on real property where the owner will occupy at least 25% of the real property and the development budget is \$500,000 or less.

**Small Investor** means:

- (A) A small business enterprise pursuant to D.C. Official Code § 2-218.32; or
- (B) A District-domiciled individual with a net worth that does not exceed the limit set by DSLBD for investors.

**Signatures to follow**

I acknowledge receipt of this Acknowledgement Form, and understand that a Beneficiary, CBE, or Certified Joint Venture, or its designee, successor, or assign that fails to comply with all of the relevant requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (D.C. Law 20-108) (the "Act"), which include, but are not limited to the provisions above, shall be subject to penalties as outlined in the Act. I further acknowledge that I am authorized to sign on behalf of the entity listed below.

  
Todd Weiss

Name

09/15/15

Date

Member

Title

Roadside Development, LLC (an affiliate of which will be the majority member of SPE to be formed for the project)

Company

**ACKNOWLEDGED AND AGREED TO BY EQUITY PARTICIPANT(S):**

By: 

Todd Weiss

List Name of Person Signing

09/15/15

Date

Roadside Development, LLC (an affiliate of which will be an equity participant)

List Company and Title of Person Signing

20

% of Equity Participation in the Project

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

September 17, 2015

Lionel Lynch  
Project Manager  
Roadside Development, LLC  
1730 Rhode Island Avenue, NE  
Suite 512  
Washington, DC 20036

Dear Mr. Lynch:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and Roadside Development, 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: Grimke School and Related Parcels. 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](http://www.dcnetworks.org). Please contact DeCarlo Washington at (202) 698-5772 to receive assistance with identifying qualified District residents for placement.

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

Sincerely,

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

Drew Hubbard  
Associate Director  
First Source Program

Enclosure



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



**GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION**

CONTRACT/SOLICITATION NUMBER: "Grimke School and related parcels" RFP  
 DISTRICT CONTRACTING AGENCY: ODMPED  
 CONTRACTING OFFICER: Marc Bleyer  
 TELEPHONE NUMBER: (202) 727-8929  
 TOTAL CONTRACT AMOUNT: \$17 million construction costs  
 EMPLOYER CONTRACT AMOUNT: \$17 million construction costs  
 PROJECT NAME: Grimke School and related parcels  
 PROJECT ADDRESS: 1923 VERMONT AVENUE, N.W., AND 912 U STREET, N.W  
 CITY: Washington STATE: DC ZIP CODE: 20001  
 PROJECT START DATE: 2016 PROJECT END DATE: 2018  
 EMPLOYER START DATE: September 2016 EMPLOYER END DATE: December 2018

**RECEIVED**  
 SEP 16 2015  
 BY:

**EMPLOYER INFORMATION**

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

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

**I. DEFINITIONS**

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

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

B. **Beneficiary** means:

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

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

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

District vocational rehabilitation program;

5. Unemployed for 6 months or more in the last 12-month period;
  6. Homeless;
  7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or
  8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.
- K. Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.
- L. Jobs** means any union and non-union managerial, nonmanagerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.
- M. Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.
- N. Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:
1. A projection of the total number of hours to be worked on the project or contract by trade;
  2. A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by DC residents;
  3. A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by DC residents;
  4. A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by DC residents;
  5. A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by DC residents;
  6. A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;
  7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

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

## II. GENERAL TERMS

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

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

### III. TRAINING

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

Training Agreement.

**IV. RECRUITMENT**

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

**V. REFERRAL**

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

**VI. PLACEMENT**

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

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

## **VII. REPORTING REQUIREMENTS**

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

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

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

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

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

#### **IX. MONITORING**

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

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:   
Todd Weiss

EMPLOYER Senior Official

Roadside Development, LLC

Name of Company

1730 Rhode Island Ave NW, Suite 512

Washington, DC 20036

Address

202-375-7979

Telephone

tweiss@roadsidellc.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

9/17/15  
Date

### EMPLOYMENT PLAN

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

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

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

CONTACT PERSON: Lionel Lynch TITLE: Project Manager

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

DISTRICT CONTRACTING AGENCY: Deputy Mayor for Planning and Economic Development

CONTRACTING OFFICER: Marc Bleyer TELEPHONE NUMBER: 2027278929

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

EMPLOYER CONTRACT AMOUNT: \$17 million

PROJECT START DATE: 2016 PROJECT END DATE: 2018

EMPLOYER START DATE: 2016 EMPLOYER END DATE: 2018

**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	n/a			
B				
C				
D				
E				
F				
G				
H				
I				
J				
K				

Please see justification on page 3.



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

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