

**CERTIFIED BUSINESS ENTERPRISE
UTILIZATION AND PARTICIPATION AGREEMENT**

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT (this "Agreement") is made by and between the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**, (the "DSLBD") and **HOFFMAN-STRUEVER WATERFRONT, LLC**, a District of Columbia limited liability company, or its designees, successors or assigns but expressly excluding SWW (as hereinafter defined) (the "**Developer**").

RECITALS

A. Pursuant to that certain Land Disposition Agreement ("**LDA**") to be executed by and between the District of Columbia c/o the Office of the Deputy Mayor for Planning and Economic Development and Developer in accordance with a resolution of the Council of the District of Columbia, Developer intends to provide for the mixed-use development of a 28-acre land area and 21-acre riparian area along the Washington Channel in Southwest Washington, DC (the "**Project**"), and in connection therewith is seeking financing from the District pursuant to Bill 17-591, Southwest Waterfront Bond Financing Act of 2008.

B. Developer currently anticipates that the Project will be developed in four phases (each, a "**Development Phase**").

C. For purposes of this Agreement, the Project excludes the SW Waterfront, LLC ("**SWW**") development parcel, which includes hotel and retail uses of approximately 300,000 gfa ("**SWW Parcel**") and will be developed by SWW concurrently with the development of Phase IA. The SWW Parcel is not included within the Project budget or the budget for Phase IA, and DSLBD shall negotiate a CBE Agreement directly with SWW with respect to its development of the SWW Parcel.

D. Pursuant to LDA, the Developer covenants that it has executed and will comply in all respects with this Certified Business Enterprise Utilization and Participation Agreement.

E. Capitalized terms not defined herein shall have the meaning assigned to them in the LDA.

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

**ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

Section 1.1. CBE Utilization; Phases. Developer shall hire and contract with or shall cause its contractors to hire and contract with Certified Business Enterprises (each a "CBE") certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (the "**Act**") in connection with each of the four Development Phases, which may include, without limitation, professional and technical services; construction management, construction

trade work, and suppliers; and procurements of maintenance, security, site improvements, janitorial, refuse collection, and other goods and services in any way related to the Project, but excluding those areas listed on Attachment 1 (the "Exclusions"). Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to no less than thirty-five percent (35%) of the Project budget, as adjusted by DSLBD in accordance with Attachment 1 (the "CBE Minimum Expenditure"). As detailed in Attachment 2 hereto, the adjusted Project budget as of the date of this Agreement is Seven Hundred Sixteen Million Dollars (\$██████████). The CBE Minimum Expenditure is therefore Two Hundred Fifty Million Six Hundred Thousand Dollars (\$██████████). Developer plans to develop the Project in four Development Phases, each of which is preliminarily identified in Attachment 3. Developer may periodically adjust the starting and ending dates for each Development Phase and will give DSLBD prompt written notice of any such adjustment. The Project budget will be a compilation of budgets for each Phase of the Project (each a "Phase Budget" and collectively, the "Project Budget"). For each Phase of the Project, Developer shall expend with CBEs an amount not less than thirty-five percent (35%) of the Phase Budget (the "Contracting Target").

Section 1.2. Phase CBE Plans. Developer will inform DSLBD in writing of the beginning of each Development Phase at least thirty (30) days prior to its commencement of design with respect to such Development Phase and will provide DSLBD with its plan depicting Developer's intended CBE utilization to achieve the Contracting Target for such Phase (each a "Phase CBE Plan") and the Phase Budget for such Development Phase. Each Phase CBE Plan, also known as a "CBE Utilization Plan", shall list all of the project procurement and contract categories and estimated start-up and completion dates. Each Phase CBE Plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs, and shall be in substantially the form of Attachment 4 and made a part of this Agreement. Developer shall submit to DSLBD written updates and modifications to each Phase CBE Plan and Phase Budget as specified in Section 1.4.

Section 1.3. Capacity Building Incentives. Developer acknowledges that a priority of the District of Columbia is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises as defined in the Act (each a "DBE") in particular. Such incentives when earned by Developer will be applied by DSLBD to reduce Developer's CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) Attached to this Agreement as Attachment 5 is a list of professional services, trade specialties or other vocational areas in which CBEs either lack capacity, lack depth or in which such firms traditionally do not participate as prime contractors in construction projects of this nature and size (collectively, together with the Exclusions, the "Target Sectors").

(b) For every dollar expended with a DBE for services that fall within a Target Sector, Developer shall receive a \$2.00 credit against the applicable Contracting Target. For example, a \$200,000 contract award paid to a DBE construction management firm would be counted as \$400,000 by DSLBD when measuring Developer's performance against the

Contracting Target. Additionally, for every dollar expended with a CBE that is not certified as a DBE for services that fall within a Target Sector, Developer shall receive a \$1.50 credit against the Contracting Target. For every dollar expended with a DBE for services that do not fall within a Target Sector, Developer shall receive a \$1.25 credit against the applicable Contracting Target (collectively, the credits are referred to as the "**Reporting Bonus**").

(c) Every contract, purchase or task order (as applicable) (the "**Reporting Incentive Contracts**") issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "**Director**") to ensure that the scope of work is properly characterized within a Target Sector and that the contract is with and payments were made to a CBE firm and such firm is properly categorized. The Reporting Bonus will not be credited to Developer unless the Director approves the specific Reporting Incentive Contract; provided, however, that a negative determination will not preclude Developer from receiving standard credit for the expenditure as set forth herein. If DSLBD does not complete review of Reporting Incentive Contracts within thirty (30) days of its receipt thereof, the Reporting Bonus shall be deemed approved.

(d) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (e.g., pay without delay programs; establishment of strategic partnerships or mentor-protégé initiatives). In particular, Developer is encouraged to work with its general contractors and/or construction managers (the "**General Contractor(s)**") to develop more flexible criteria for pre-qualifying CBEs for participation on the mixed-use projects. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

Section 1.4. Submission of and Alterations to Phase Budgets.

(a) Each initial Phase Budget is included in the Project budget used to ascertain the CBE Minimum Expenditure pursuant to Section 1.1 (each, an "**Initial Development Budget**"). Prior to the commencement of each Development Phase, the Initial Development Budget for that Development Phase may be revised as a result of more specific cost figures than those available when the initial Project Budget was developed. Accordingly, each Phase Budget, and, as a result, the entire Project Budget, may be revised in accordance with this Section 1.4 immediately prior to the execution by Developer of (i) the master design architect agreement for the Pre-Development Phase; and (ii) the design architect's agreement for the horizontal development of the subsequent Development Phases.

(b) If any Phase Budget increases by an amount greater than 5% of the Initial Development Budget for such Development Phase, Developer will notify DSLBD in writing of the increase and indicate that either (i) Developer has elected to increase the CBE Minimum Expenditure and applicable Contracting Target by an identical percentage; or (ii) Developer requests a meeting with DSLBD to discuss an equitable modification to the CBE Minimum Expenditure and applicable Contracting Target. Developer will modify its Phase CBE Plan

accordingly and submit the amended Phase CBE Plan to DSLBD within ten (10) business days of such modification.

(c) If any Phase Budget decreases by an amount greater than 5% of the Initial Development Budget for such Phase, Developer will notify DSLBD in writing of the decrease and indicate that either (i) Developer has elected to decrease the CBE Minimum Expenditure and applicable Contracting Target by an identical percentage; or (ii) Developer requests a meeting with DLSBD to discuss an equitable modification to the CBE Minimum Expenditure and applicable Contracting Target. Developer will modify its Phase CBE Plan accordingly and submit the amended Phase CBE Plan to DSLBD within ten (10) business days of such modification.

ARTICLE II CBE OUTREACH AND RECRUITMENT EFFORTS

Section 2.1. Identification of CBEs and Outreach Efforts. Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website (<http://dslbd.dc.gov>). In particular, Developer shall publish, or cause its contractors to publish, all contracting opportunities for this Project within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD for certification. Throughout the duration of the Project, Developer or its General Contractor(s) shall (as set forth in Section 4.1) periodically publish notices in any of the following newspapers primarily serving the District of Columbia: *The Current Newspapers*, *The Washington Informer*, *the Washington Afro-American*, *Common Denominator*, *Washington Blade*, *Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities which could qualify as CBEs, about the business opportunities. In the event that Developer develops a website for the Project, such website shall (a) advertise upcoming bid packages, (b) present instructions on how to bid, and (c) directly link to DLSBD's website.

ARTICLE III INFORMATION SUBMISSIONS AND REPORTING

Section 3.1. Quarterly Reports. Throughout the duration of the Project, beginning with the end of the first calendar quarter after execution of the LDA, Developer will submit quarterly contracting and subcontracting expenditure reports for each Development Phase of the Project underway during such calendar quarter, which identify:

(a) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the amount of the contract (including any modifications or change orders;

(b) the nature of the contract;

(c) the amount actually paid by Developer to the CBE under such contract that quarter and to date;

(d) the certification categories for each vendor/contractor and the certification number;

(e) the work performed by vendors/contractors in Target Sector(s) and any approved Reporting Bonuses;

(f) the percentage of overall development expenditures which were paid to CBEs; and

(g) any modifications to the CBE Minimum Expenditure and/or applicable Contracting Target resulting from alterations to any Phase Budgets as provided in Section 1.4.

These reports shall be submitted no later than thirty (30) days after the end of each quarter. The reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 6). However, DSLBD reserves the right to reasonably amend this form, after consultation with the Developer. This report shall also describe the Developer's outreach efforts (if any) during the reporting period, to identify CBEs and/or encourage them to bid on or otherwise apply to provide labor, services, goods, and materials for use in any Development Phase not yet concluded. Companies that may be eligible for certification, but are not yet certified, or whose certification is pending with DSLBD shall not be included in these reports unless and until the company is certified. Once such a company has obtained certification, all amounts spent on the Project under that company's contract, beginning on the date the company filed a complete application for certification with DSLBD, will be applied toward the CBE Minimum Expenditure and applicable Contracting Target. Concurrently with submission of the quarterly reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 7.

ARTICLE IV GENERAL CONTRACTORS

Section 4.1. Adherence to CBE Minimum Expenditure. Developer shall require in its contractual agreements with its General Contractor(s) that the General Contractor(s) comply with the obligations and responsibilities of Developer contained in this Agreement with respect to achieving the CBE Minimum Expenditure and applicable Contracting Targets. Developer shall inform its General Contractor(s) that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the General Contractor(s) respectively. Specifically, Developer will obtain the following commitments from its General Contractor(s) ("GC"):

(a) The GC will publish a public notice in a newspaper whose primary circulation is in the District of Columbia (e.g., Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, The Current Newspapers, etc.) for the purpose of soliciting bids for products or services being sought for construction and renovation projects and will allow a

reasonable time (e.g., no less than 30 business days) for all bidders to respond to the invitations or requests for bids.

(b) The GC will contact DSLDB to obtain a current listing of all CBEs qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at <http://dslbd.dc.gov> for listing opportunities and for subcontracting compliance monitoring.

(c) In order to achieve the applicable CBE Minimum Expenditure/Contracting Target for the Project, Developer shall require in its contractual agreements with the GC that in the event the GC elects to request best and final offers from the top bidders, such opportunity shall also be granted to each responsive CBE bidder.

(d) The GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance or letter of credit.

(e) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices by regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(f) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

(g) The GC commits to pay all CBEs, within thirty (30) days following the GC's receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer's payment to the GC.

ARTICLE V EQUITY AND DEVELOPMENT PARTICIPATION

Section 5.1. Minimum LSDBE Participation Requirements. Developer acknowledges and agrees that businesses certified pursuant to the Act, as local, small and disadvantaged business enterprises ("LSDBEs"), shall receive no less than twenty percent (20%) in equity participation and no less than twenty percent (20%) in development participation in the Project, in accordance with Section 2349a of the Act, D.C. Official Code § 2-218.49a.

(a) Pursuant to the Operating Agreement of Hoffman-Streuver Waterfront, LLC ("**Operating Agreement**") dated as of June 11, 2008 by and between PNH Waterfront LLC ("**PNH Waterfront**"), E.R. Bacon Development LLC ("**E.R. Bacon**"), Gotham Waterfront Development LLC ("**Gotham**"), Paramount Development, LLC ("**Paramount**"), Triden Development Group LLC ("**Triden**"), Southwest Washington Waterfront Investments LLC

("SBER"). MBS SW Waterfront LLC ("MBS") and CityPartners SWWF, LLC ("CityPartners") (collectively, "Members"), attached as Attachment 8 and incorporated herein by reference, the Members have formed a limited liability company known as Hoffman-Streuver Waterfront, LLC ("HSW") that is the Developer for this Project.

- (i) Section 3.1(a) of the Operating Agreement states that no less than twenty percent (20%) of HSW and of each Phase Developer (as defined in the Operating Agreement) shall be owned by LSDBEs.
- (ii) Pursuant to Articles Two and Four of the Operating Agreement and Exhibits B, C, G-1 and G-2 of the Operating Agreement, E.R. Bacon, Gotham, Paramount, and Triden, which are all certified LSDBEs (together with entities that may replace any of the foregoing in accordance with the terms of the Operating Agreement, the "LSDBE Members"), are each assigned an ownership interest in HSW based on their respective initial capital contributions as well as for their respective participation in HSW as a developer. The LSDBE Members have a combined 20% ownership interest in HSW, thereby satisfying the 20% equity participation requirement.

(b) Pursuant to Section 5.8(b) and Exhibits F, G-1, G-2, and G-3 to the Operating Agreement, the LSDBE Members will collectively receive no less than 20% of development fees earned by HSW for performing development roles, thereby satisfying the 20% development participation requirement. Notwithstanding the foregoing, in the event any LSDBE Member(s) are in default of their obligation(s) to perform their development duties, such defaulting LSDBE Member(s) shall have no right to receive their share of the development fees earned by HSW, and HSW shall not be deemed in default of its obligations hereunder as a result of the occurrence of such event.

Section 5.2. Pari Passu Returns for LSDBE Equity Partner(s). Developer agrees that LSDBE Members shall receive a return on investment in the Project that is pari passu with all other sources of sponsor developer equity. Pursuant to sections 4.1(b) and (c) of the Operating Agreement, the first distributions to the HSW (after optional loans) are to pay the Members' preferred returns proportionately and then return the capital contributions of each member who made a capital contribution proportionately based upon the amount contributed. Pursuant to section 4.1(d) of the Operating Agreement, the residual cash flow distributions are made proportionately to the Members per their respective percentage interests. Further, Pursuant to Section 4.1(d)(ii) of the Operation Agreement, at the time of final distribution, if the Members who have made capital contributions have not achieved a 20% Internal Rate of Return ("IRR") on their capital contributions, profits will be redistributed from other Members to achieve the requisite 20% IRR.

Section 5.3. Preservation of LSDBE Financial Interest. Developer agrees that original equity investments by LSDBE Members shall not be diluted over the course of the Project unless such dilution occurs as a supermajority decision of the Developer as detailed in Section 5.3(c)(1)(ii) of the Operating Agreement, and only if dilution of LSDBE Members' equity is in direct proportion to dilution of sponsor equity. Pursuant to Section 3.1(e) of the Operating Agreement, any dilution of the LSDBE Members (for purposes of admission of an

institutional equity investor into HSW) will retain the same percentage interest relative to the other HSW Members after such reduction resulting in a pro-rata reduction of each Member. In addition, pursuant to Section 2.2 of the Operating Agreement any additional equity requested for development is optional and will be offered to the current Members that have contributed capital. These contributions are treated as loans and are based upon the market rates set forth in Section 2.2 of the Operating Agreement.

Section 5.4. LSDBE Risk Commensurate With Equity Position. Developer agrees that no LSDBE Member shall be expected to bear financial or execution requirements that are out of proportion with the LSDBE Member's equity position in Developer and/or the Project. Pursuant to Section 2.1(b) of the Operating Agreement, capital contributions and distributions of equity, preferred return, and return on equity are pari passu according to equity contribution. No burdens or requirements are placed on LSDBE Members that are not placed on the non-LSDBE equity contributors. Additionally, pursuant to Section 4.3 of the Operating Agreement, if HSW does not have sufficient cash to make appropriate tax distributions, then PNH is required to loan funds to LSDBE Members to insure that they can pay their taxes.

Section 5.5. Management Control and Approval Rights. LSDBE Members participate in all majority and supermajority decisions, in accordance with each Member's voting interest in the Company, including admission of new members, dissolution of the Company, or revisions to the Business Plan. All majority and supermajority decisions are outlined in Section 5.3(c) of the Operating Agreement.

Section 5.6. LSDBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that LSDBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort. Pursuant to Section 5.3(d) of the Operating Agreement, LSDBE Members shall have the right to be actively involved in the Project and participate in material ways on the Project. LSDBE Members' involvement in the Project shall include the opportunity to fulfill the roles and responsibilities shown in exhibits G-1, G-2, G-3, and G-3a to the Operating Agreement as well as participation in the distribution of fees, and the right to enter into service contracts with HSW pursuant to Section 5.8 of the Operating Agreement. Developer agrees to consistently represent and include LSDBE members of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate LSDBE Members.

Section 5.7. Continuing Status of LSDBE Members. DSLBD agrees that in the event any LSDBE Member no longer qualifies as an LSDBE solely as a result of the growth of its business, such LSDBE Member shall continue to be deemed an LSDBE for purposes of the requirements of this Agreement. DSLBD further agrees that any LSDBE Member that has maintained its status as an LSDBE for five (5) years from the date of this Agreement shall continue to be deemed an LSDBE Member for the balance of the term of this Agreement.

ARTICLE VI CONTINGENT CONTRIBUTIONS

Section 6.1. Contingent Contributions for Failure to Meet CBE Minimum

Expenditure. With respect to the Pre-Development Phase, upon achievement of closing (as contemplated in the LDA), and with respect to the other Development Phases of the Project, upon issuance of certificate(s) of occupancy for the last building(s) in each other Development Phase of the Project, such Phase shall be deemed concluded and DSLBD shall measure the percentage difference between the Contracting Target and Developer's actual expenditures. If there is a shortfall (the "Shortfall") at the end of a Development Phase, Developer shall make the following payments (each, a "Contingent Contribution") to DSLBD in the time and in a manner to be determined by DSLBD, which funds shall be utilized by DSLBD to further its capacity building efforts to benefit CBEs and District-based small businesses. The Contingent Contributions shall be based on seven and one-half percent (7.5%) of the Contracting Target for each Development Phase (the "Phase Contribution Fund"). The Contingent Contributions shall be calculated as follows:

- (a) If the Shortfall is more than 50% of the Contracting Target, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Phase Contribution Fund for that Phase.
- (b) If the Shortfall is between 10% and 50% of the Contracting Target, Developer shall make a Contingent Contribution that is the percentage of the Phase Contribution Fund for that Phase that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Phase Contribution Fund for that Phase.
- (c) If the Shortfall is less than 10% of the Contracting Target, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the Contracting Target, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its Contracting Target by (i) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement and Attachment 9 to this Agreement; (ii) complying with Article IV of this Agreement; (iii) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and by taking the following actions:
 - (A) In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;
 - (B) During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (*i.e.*, each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

- (C) Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;
- (D) In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;
- (E) Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
- (F) Provide up to ten (10) sets of free plans and specifications for business organizations representing Target Audiences upon request;
- (G) Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(d) If the Shortfall is less than 10% of the Contracting Target, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the Contracting Target, Developer shall make a Contingent Contribution that is the percentage of the pro rata share of the Contribution Fund for that Phase that is equal to the Shortfall.

Section 6.2. Failure to Meet Equity and Development Participation Requirements. Subject to the terms of Section 6.4, failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement ("**Equity/Development Participation Default**").

Section 6.3. Other Remedies. Subject to the terms of Section 6.4, failure to make any required Contingent Contribution in the time and manner specified by DSLBD in this Agreement shall be a material breach of this Agreement ("**Contingent Contribution Default**"). In the event that such a material breach occurs and is not timely cured as hereinafter provided, the Developer shall be considered in breach of its obligations under this Agreement, and DSLBD shall have such remedies as are available at law or in equity, including specific performance. Notwithstanding anything to the contrary contained herein, in the event that Developer makes the full amount of the Contingent Contribution to DSLBD, such amount shall be considered for all purposes hereunder to be liquidated damages and the sole remedy available to DSLBD hereunder and in that event Developer shall not be in default or breach hereunder from and after the time such full payment is made to DSLBD; provided, however, that in the event of a material default by Developer such that DSLBD elects to pursue other remedies at law or equity against Developer (in lieu of retaining the Contingent Contribution as liquidated damages), DSLBD shall return the previously paid Contingent Contribution to Developer prior to pursuing such remedies or claim of default.

Section 6.4. Notice of Default and Opportunity to Cure. Notwithstanding anything to the contrary contained in this Agreement and/or in Sections 6.2 and 6.3 above, Developer shall not be in breach or default of this Agreement unless and until (a) with respect to any monetary payments payable to DSLBD hereunder, a failure by Developer to pay or cause to be paid any amount required to be paid (subject to resolution of any good faith dispute hereunder) and such failure shall continue for ten (10) business days after written notice from DSLBD in reasonable detail specifying such default and the time to cure, and (b) with respect to any other material default or breach by Developer of the terms or covenants of Developer under this Agreement and Developer shall fail to remedy such default within ninety (90) calendar days after written notice by DSLBD in reasonable detail specifying such default, or if such a default is of such a nature that it cannot reasonably be remedied within such 90-day period, then Developer shall have such additional period of time as may be reasonably necessary to cure such default, provided that Developer commences the cure within such original 90-day period and thereafter diligently pursues and completes such cure within an additional ninety (90) calendar day period to DSLBD's reasonable satisfaction, which shall not be unreasonably withheld, conditioned or delayed.

Section 6.5. Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

Section 6.6. Default Under LDA. Notwithstanding anything to the contrary contained herein, the occurrence of an Equity/Development Participation Default or a Contingent Contribution Default beyond the applicable notice and cure period set forth in Section 6.4 of this Agreement shall constitute a material default under the LDA and subject to the terms thereof.

ARTICLE VII ASSIGNMENT BY DEVELOPER

Section 7.1. Permitted Assignments. DSLBD hereby acknowledges and agrees that Developer may transfer all its right, title and interest in one or more of the parcels within the Project created for vertical development to a third-party entity that will develop the improvements to be constructed on such parcel. In the event Developer consummates such a transfer in accordance with the terms of the LDA, DSLBD shall be deemed to have consented thereto; provided, however, any such transfer by Developer shall require the transferee to execute, promptly after closing of such transfer, a Certified Business Enterprise Utilization and Participation Agreement with DSLBD on terms substantially similar to those contained in this Agreement. Upon the occurrence of such a transfer, all of Developer's obligations under this Agreement with respect to the component of the Development Phase that has been transferred shall become the obligations of the transferee, including, without limitation, the obligations contained in Article VI hereof to make Contingent Contributions in the event there is a Contracting Target Shortfall with respect to such component, and Developer shall simultaneously be deemed released from such obligations with respect thereto.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Primary Contact. The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

Section 8.2. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD: Department of Small and Local Business Development
441 4th Street, N.W., Suite 970 North
Washington, DC 20001
Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

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

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

To Developer: Any notices to be given under this Agreement to Developer shall be in writing and delivered by certified mail, postage pre-paid, or by hand or by private, reputable overnight commercial courier service, to Developer at the following address:

Hoffman-Struever Waterfront L.L.C.
c/o PN Hoffman & Associates
4725 Wisconsin Avenue, N.W., Suite 200
Washington, DC 20016
Attention: Lamont Hoffman, CEO

With a copy to:

PN Hoffman & Associates
4725 Wisconsin Avenue, N.W., Suite 200
Washington, DC 20016
Attention: Mark C. Dorigan, EVP
Tel: (202) 686-0010
Fax (202) 686-0089

With a copy to:

Nixon Peabody, LLP
401 9th Street, NW, Suite 900
Washington, DC 20004
Attention: Debra D. Yogodzinski, Esq.
Tel: (202) 585-8746
Fax: (202) 585-8080

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

Section 8.3. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 8.4. Successors and Assigns. Except as permitted pursuant to Article 7 of this Agreement, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto.

Section 8.5. Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 8.6. Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 8.7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 8.8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements and understandings related to the subject matter hereof, including, without limitation, the Exclusive Rights Agreement dated as of November 10, 2006 between Developer and the Anacostia Waterfront Corporation..

Section 8.9. Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 8.10. Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

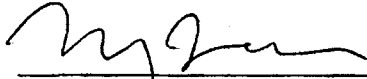
<i>Attachment 1:</i>	Exclusion List
<i>Attachment 2:</i>	CBE Minimum Expenditure
<i>Attachment 3:</i>	Development Phases
<i>Attachment 4:</i>	Utilization Plan
<i>Attachment 5:</i>	Target Sector List
<i>Attachment 6:</i>	CBE Quarterly Reports
<i>Attachment 7:</i>	Vendor Verification Form
<i>Attachment 8:</i>	Operating Agreement
<i>Attachment 9:</i>	Suggested Documentation of Outreach Efforts

Section 8.11. Termination. This Agreement will automatically terminate at the later to occur of (a) the end of the last Development Phase of the Project or (b) receipt by DSLBD of all Contingent Contributions due and payable.

[SIGNATURE PAGE FOLLOWS]

AGREED TO AND EXECUTED THIS 11 DAY OF JULY, 2008.


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

BY: 

**NICOLE J. BECTON
INTERIM DIRECTOR**

HOFFMAN-STRUEVER WATERFRONT, LLC

BY: **PN HOFFMAN & ASSOCIATES, INC.
MANAGING MEMBER**

BY: 

**LAMONT HOFFMAN
CHIEF EXECUTIVE OFFICER**