

# DRAFT

## CONGRESS HEIGHTS METRO/SQUARE 5914 DEVELOPMENT COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement (the "**Agreement**") is agreed upon as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between Square 5914, LLC, a District of Columbia limited liability company ("**Developer**") and the Advisory Neighborhood Commission 8E, a District of Columbia governmental entity ("**ANC**") and Congress Heights Community Association, a District of Columbia \_\_\_\_\_ association ("**CHCA**") and Congress Heights Community Training and Development Corporation, a District of Columbia nonprofit corporation ("**CHCTDC**") and Lead the Way Foundation and Higher Hopes, Inc., a District of Columbia corporation ("**LTWF**") and Ward Eight Council Against Domestic Violence, a District of Columbia \_\_\_\_\_ ("**WECADV**") (collectively, the "**Parties**").

**WHEREAS**, Developer is developing the proposed Development on the Site which is located in Ward 8 in the District of Columbia; and

**WHEREAS**, ANC 8E is governmental advisory board, that is made up of the residents of the neighborhoods near the Site, whose purpose includes gathering and communicating feedback from residents that are directly affected by government action which affects their community; and

**WHEREAS** CHCA is a \_\_\_\_\_ community association which represents residents of the largest neighborhood in Ward 8 (including the residents of the Congress Heights neighborhood surrounding the Site) whose purpose includes programs, initiatives and activities focused on enhancing the Ward 8 community and the quality of life for its residents; and

**WHEREAS** CHCTDC is a 501(c)3 nonprofit corporation whose purpose includes a focus on improving the quality of life for the residents of Ward 8 by providing (i) job placement opportunities that would aid in the reduction of unemployment and underemployment by promoting self-sufficiency, (ii) economic development services consisting of business development, entrepreneurial training, and financial management, and (iii) implementation of economic development projects in collaboration with private public entities to stimulate job creation and provide affordable housing opportunities for low and moderate income residents; and

**WHEREAS** LTWF is a \_\_\_\_\_ whose purpose includes \_\_\_\_\_; and

**WHEREAS** WECADV is a \_\_\_\_\_ whose purpose includes increasing awareness and education in order to decrease domestic violence in Ward 8; and

**WHEREAS** as ANC, CHCA, CHCTDC, LTWF, and WECADV each have a purpose focused on improving and benefitting the community within the portion of Ward 8 served by ANC they joined together to form an unincorporated association known as A Community Coalition for Responsible Development (“**ACCORD**”); and

**WHEREAS** Developer and ACCORD share a mutual goal to maximize the benefits of the proposed Development and the Parties desire to clarify their understandings with respect to the same.

**NOW THEREFORE**, for good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE I

### Purpose

**1.1** The purpose of this Agreement is to provide for a concerted and coordinated effort by the Parties to maximize the benefits of the proposed Development on the Site to the surrounding community.

**1.2** With this Agreement, Developer and the Development will generate quality jobs for workers; will create affordable housing for working families and for residents in surrounding communities; will provide for environmentally-sensitive construction and design; will create economic development opportunities for residents of the affected communities; and will enhance employment opportunities and job training programs targeted to community residents in need of employment.

## ARTICLE II

### Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“**ACCORD**” shall mean an unincorporated association composed only of the organizations signatory to this Agreement under the ACCORD Member Organization Signature Page(s). These organizations are referred to individually as “Member Organizations.” Obligations of a Member Organization shall be obligations only of the organization itself, as distinct from its associated organizations, constituent organizations, or any natural persons.

“**Agencies**” shall mean any District governmental authorities (including, but not limited to, the Zoning Commission, the Office of Planning, and the Department of Transportation) that provide comment on or approve the design and construction of the Development.

“**Agreement**” shall mean this Community Benefits Agreement, including all attachments.

“**Developer**” shall mean Square 5914, LLC.

“**Development**” shall mean a mixed-use project to be constructed on the Site, consisting of residential (approximately 205-215 units), office, and retail (approximately 16,250 square feet) uses.

“**Development Approvals**” shall mean (1) approval by the Agencies of the Planned Unit Development and Zoning Map Amendment application (PUD); (2) approval by the Office of Planning and the Agencies (if applicable) of permits for the Development and all plans, drawings and other items submitted in connection therewith, at the Zoning Commission level; and (3) any other government approvals or permits requested by Developer for construction, development, and operation of the Development, including without limitation, issuance by the District of Columbia of building permits to construct the Development.

“**Implementation Committee**” a sub group of ACCORD established by the Developer and ACCORD to discuss strategies for implementation of the policies and programs set forth in this Agreement.

“**Member Organization**” shall have the meaning set forth in the definition of “ACCORD.”

“**Ward Eight Community**” shall mean the entire Ward Eight.

“**Site**” shall mean Parcels 229/161, 229/160, 229/153, 229/151 and 229, 103 in Square 5914 and Lost 6 and 7 in Square 5914.

### **ARTICLE III**

#### **Environmental Commitments**

**3.1 Green Certifications.** Developer shall comply with the Washington DC Green Building Act of 2006 and obtain at least certified status for all buildings included in the Development, when Developer deems it financially feasible, under the Leadership in Energy and Environmental Design Green Building Rating System for New Commercial and Major Renovations (LEED-NC)

(Version 2.1) In addition, Developer shall investigate the feasibility of constructing a building within the Development that achieves a higher LEED level than the certified level (i.e., silver, gold or platinum level).

**3.2 Hazardous Substance Remediation.** Developer shall comply with all applicable local and federal laws in regard to the remediation of hazardous substances.

## ARTICLE IV

### Construction Practices

**4.1 Construction Noise and Traffic.** Developer shall consult with the Implementation Committee to assure that all reasonable steps are taken to minimize noise and traffic congestion during construction.

**4.2 Security of Site During Construction.** Developer shall use commercially reasonable efforts to secure and control access to the Site, or the portions thereof, upon which construction is occurring.

**4.3 Public Complaint Process.** Developer shall establish a public complaint process, and shall maintain written records of complaints, investigations, and responsive actions taken, all of which shall be made available to ACCORD upon request.

## ARTICLE V

### Design Review

**5.1 Consultation.** Developer shall hold periodic meetings with the Implementation Committee to review, and to receive input, on proposed land uses, site layout, traffic circulation patterns, and the exterior appearance of units.

## ARTICLE VI

### Affordable Housing

**6.1 Existing Tenants Opportunity to Return.** Developer shall provide all current tenants the absolute right to return, within eight months of the issuance of a certificate of occupancy for the residential building in the Development, to new residential units of similar size in the Development. Current tenants shall return to the new residential units of similar size at the current rent with future rent increases limited to no more than a 4% annual increase.

**6.2 Affordable Residential Units.** Developer shall set aside 8% of the total amount of the residential square footage in the Development for households earning up to 80% of the Area Median Income (AMI).

## ARTICLE VII

### Employment Opportunities

**7.1 Access to Employment Opportunities.** The Developer and ACCORD shall take steps to promote employment of local residents by employers within the Development. The Developer shall utilize the existing First Source Job Referral System established and maintained by the Department of Employment Services to accomplish this goal.

**7.2 Employment Goals: Construction.** Developer shall endeavor to have thirty percent (30%) participation in construction jobs on the Development filled by Ward 8 residents. The positions expected to be available during the course of construction will be incorporated in action plans submitted by the general contractors prior to their selection by the Developer for each phase of development. The Implementation Committee, prior to the final selection of the general contractor by the Developer for each phase, shall review such action plans.

**7.3 Internships.** The Developer will endeavor to employ at least two interns in paid positions throughout the course of the construction of the Development. Current and former residents of the Site will have first preference in the granting of these Internships. Residents of the Ward Eight Community will have second preference.

**7.4 Job Training Programs.** The Developer will offer employment directly or through its contractors or subcontractors to successful Ward 8 graduates of occupational skills training programs. Graduates of The Far Southeast Family Strengthening Collaborative, Inc. (FSFSC), Opportunities Industrialization Center (OIC), and United Planning Organization (UPO) occupational skills training programs will have first preference. Successful graduates will be given first preference as positions that match their skills become available, prior to construction and during the operation of each phase of development.

**7.5 Additional Training Programs.** The Developer works with many professionals with specialized areas of expertise. For example, the Developer works with firms that specialize in environmental planning, analysis and remediation, soils testing and analysis, affordable housing management, and tax credit compliance, etc. The Developer will work with the Implementation Committee to identify professional services such as environmental and geotechnical services for which training for Ward Eight Community residents is not currently provided.

## ARTICLE VIII

### Working Capital Fund for Contracting Opportunities

**8.1 Revolving Working Capital Fund.** Developer will establish a revolving working capital fund, in an amount no less than \$200,000, for contracts directly with the Developer. This fund will allow small subcontractors, including those located in the Ward Eight Community, retained during the construction phases of the development to cover payroll and other fixed costs on a weekly basis. This fund is subject to approval by the construction financing entity.

## ARTICLE IX

### Community Amenities Package

**9.1 Meeting Space.** Developer shall schedule meetings for the Implementation Committee in a convenient and handicapped accessible space.

**9.2 Advisory Neighborhood Commission 8E.** Developer shall provide a lease for approximately 500 square feet of office space for a term of five (5) years, with three (3), five (5) year extensions, to ANC at the cost of one (1) dollar per month. The location of this office space may be relocated by the Developer, at its sole discretion, at any time.

**9.3 Lead the Way Foundation and Higher Hopes, Inc.** Developer shall provide the LTWF with a payment of two thousand five hundred dollars (\$2,500.00) annually for a period of five years. The first annual payment shall be made prior to the issuance of a certificate of occupancy for the first building constructed as part of the approved Development. These funds shall be used by LTWF for facilitation of comprehensive, social reconstruction programs for the residents of the Ward Eight Community. These programs will include comprehensive resident and youth case management, engagement and outreach services featuring an adolescent clubhouse and including, but not limited to the, arts and cultural services, health fitness and nutrition, financial management, annual community social events, as well as development opportunities for the neighboring community.

**9.4 Congress Heights Community Association (CHCA).** Developer shall help CHCA fund the Annual Congress Heights Health and Community Day by providing a payment in the amount of five thousand dollars (\$5,000) annually for a period of five years. The first annual payment shall be made prior to the issuance of a building permit for the first building constructed as part of the approved Development.

**9.5 Ward Eight Council Against Domestic Violence (WECADV).** Developer shall provide WECADV with a payment of five thousand dollars (\$5,000.00) annually for a period of five

years. The first annual payment shall be made prior to the issuance of a certificate of occupancy for the first building constructed as part of the approved Development. These funds shall be used for \_\_\_\_\_

**9.6 Congress Heights Community Training and Development Corporation (CHCTDC).** Developer shall provide CHCTDC with a payment of two thousand five hundred dollars (\$2,500.00) annually for a period of five years. The first annual payment shall be made prior to the issuance of a certificate of occupancy for the first building constructed as part of the approved Development. These funds shall be used solely to pay for the costs of: (a) conducting training for targeted businesses in Ward 8, to develop management and business capability to perform contracts for Developer or Subcontractors under the Developer, identified by ACCORD as reasonably likely to be able to perform in the Development.

**9.7 Retail Space for Local and/or Small Business Enterprises.** Developer has designed and set aside two street level retail spaces for local and/or small business enterprises. Developer will endeavor to initially lease these areas at 75% of market lease value to local and/or small business enterprises and will provide assistance with initial tenant improvements.

## ARTICLE X

### Implementation Committee

**10.1 Goals of Implementation Committee.** To assist with implementation of this Agreement, Developer shall meet with ACCORD in a good faith, reasonable effort to develop strategies for implementation of the policies and programs set forth in this Agreement. The Developer and ACCORD shall establish a working group of representatives for this purpose, to be known as the Implementation Committee. The Implementation Committee shall meet at least quarterly up to the completion of construction of the Development, at which time it will cease meeting. At such meetings, any Member Organization or the Developer may raise issues related to implementation of this Agreement, in an effort to facilitate open dialogue, resolve implementation challenges, and advance the goals of both ACCORD and the Developer regarding this Development. All parties shall ensure that representatives attending Implementation Committee meetings are appropriate individuals for issues to be discussed, possessing relevant technical and policy expertise. Prior to requesting governmental approvals of design of buildings or components of the Development, Developer will provide such designs to ACCORD at an Implementation Committee meeting, to facilitate the ACCORD's ability to make suggestions to Developer and/or at public hearings regarding such designs. Responsibility to participate in Implementation Committee meetings shall run only against entities that have current responsibilities under this Agreement or contracts referencing it.

## ARTICLE XI

### ACCORD Support Obligations

**11.1 Accord Support for the Development.** In light of Developer's commitments set forth in this Agreement, ACCORD strongly supports the Development and supports the larger concept plan for the development of the Site by Developer. Therefore, ACCORD will undertake the supportive efforts set forth in this Article 11.

**11.2 Letters of Support.** Each Member Organization shall send a letter in unqualified support of the Development to the appropriate Agency, including but not limited to ANC 8E and the District of Columbia Zoning Commission, prior to the consideration of all approvals for the Development. Thereafter, if requested by Developer during the term of this Agreement, each Member Organization shall send a letter in support of other Development Approvals to the City Council and any other governmental entity specified by Developer.

**11.3 Media and Public Availability.** ACCORD shall work with the Developer to prepare a collaborative media strategy regarding shared support for the Development. ACCORD will, upon request, present testimony in support of the Development and shall help the Developer gain the support of the Ward Eight Community for the Development.

**11.4 Attorney Fees.** Developer agrees to pay the reasonable attorney fees of ACCORD, not to exceed a total of \$2,500, for the negotiation of this agreement.

**11.5 Covenant Not To Sue or Testify Against.** Each Member Organization and ACCORD member covenant not to sue, challenge, or contest, administratively, judicially or publicly, any of the Development Approvals. Furthermore, each Member Organization and ACCORD agrees not to pursue judicial challenges to, or testify in opposition at any public hearings (or any continuations of hearings) concerning any of the Development Approvals.

**11.6 Permissible Public Comments.** Notwithstanding the above requirements, ACCORD and each Member Organization retain the right to make public comments regarding Development Approvals suggesting changes in aspects of the documents and approval terms being considered, so long as such comments are consistent with the letter and spirit of the provisions of this Agreement. ACCORD and each Member Organization agree that before making such public comments, they shall use its best efforts to address the issues in question with Developer at Implementation Committee meetings.



## ARTICLE XII

### Miscellaneous Provisions

**12.1 Compliance With Law.** This Agreement shall be enforced only to the extent that it is consistent with the laws of the District of Columbia and the United States. If any provision of this Agreement is held by a court to be in conflict with law, the applicable law shall prevail over the terms of this Agreement, and the conflicting provisions of this Agreement shall not be enforceable.

**12.2 Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

**12.3 Remedies Default.** Failure by any party to perform or comply with any term or provision of this Agreement, if not cured, shall constitute a default under this Agreement and render the entire agreement null and void.

**12.4 Sixty-Day Right to Cure.** If either party believes that the other party is in default of this Agreement, it shall provide written notice to the allegedly defaulting party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, except where a delay may cause irreparable injury, provide sixty (60) days to cure the alleged default, commencing at the time of the notice. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

**12.5 Implementation Meetings and Mediation.** Before or during the sixty-day right-to-cure period described above, the parties may attempt to resolve any alleged default at the regularly scheduled implementation meetings, or in mediation requested by either party.

**12.6 Compliance Information.** Upon request from a party, another party hereto shall provide any records or information reasonably necessary to monitor compliance with the terms of this Agreement. No party shall request the same or similar records or information more often than once per quarter, except to the extent that the nature of the obligation being monitored requires more frequent reporting, as reasonably agreed upon by the parties.

**12.7 Rights and Responsibilities of ACCORD Member Organizations.** If this Agreement sets out a responsibility of a "Member Organization" then each Member Organization must satisfy that responsibility, and that responsibility may be enforced by Developer against each Member Organization individually; and when this Agreement sets out a responsibility solely of "ACCORD," then that responsibility is satisfied for all Member Organizations when any Member Organization satisfies that responsibility. Notwithstanding the foregoing, if any

individual Member Organization directly receives funds from Developer under this Agreement, Developer may enforce the obligations within this Agreement related to such funding directly against such Member Organization. Any Member Organization may enforce the responsibilities of Developer under this Agreement, and each Member Organization possesses the rights of ACCORD under this Agreement.

**12.8 Waiver.** The waiver by any party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

**12.9 Entire Agreement.** The Agreement contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral, except those executed concurrently with this Agreement. Concurrent execution is defined as execution within five business days. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the parties hereto.

**12.10 Appointment of ACCORD Representative.** ACCORD hereby appoints \_\_\_\_\_ as its Agent to speak and correspond with Developer on ACCORD's behalf. Developer may rely on statements made and approvals or comments given by \_\_\_\_\_ pursuant to this Agreement as constituting the agreement of ACCORD regarding such issue. ACCORD may appoint another representative by written notice to Developer.

**12.11 Authority of Signatories.** The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of their respective parties.

**12.12 Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

**12.13 Further Assurances.** The parties hereto agree to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

## SIGNATURES ON FOLLOWING PAGES

SIGNATURE PAGE

**IN WITNESS WHEREOF**, the parties hereto have hereby duly executed and delivered this agreement as of the date first above written.

**DEVELOPER**

Square 5914, LLC,  
a District of Columbia limited liability company

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Name \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

**ACCORD MEMBERS**

**ANC**  
Advisory Neighborhood Commission 8E,  
a District of Columbia governmental entity

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By: Anthony Muhammad \_\_\_\_\_ Date \_\_\_\_\_  
Its: Chairman

**CHCA**  
Congress Heights Community Association,  
a District of Columbia \_\_\_\_\_

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By: Philip Pannell \_\_\_\_\_ Date \_\_\_\_\_  
Its: President

**CHCTD**  
Congress Heights Community Training & Development,  
a District of Columbia \_\_\_\_\_

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By: Phinis Jones  
Its: Founder

Date

*[Signatures continue next page]*

**LTWF**

Lead the Way Foundation,  
a District of Columbia \_\_\_\_\_

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By: Isha Lee  
Its: Chief Executive Office

Date

**WECADV**

Ward Eight Council Against Domestic Violence,  
a District of Columbia \_\_\_\_\_

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By: Sandra "S.S." Seegars  
Its: Founder

Date