

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of November 30, 2015, by and between:

THE COURTYARDS ON CLIFTON CONDOMINIUM ASSOCIATION, a District of Columbia condominium association (for itself and any successor in title to all or any portion of the “1307 Property” identified in Paragraph A below, any and all of which are herein collectively referred to as “**1307 Association**”); and

CLIFTON STREET ACQUISITION LLC, a Delaware limited liability company (for itself and any successor in title to all or any portion of the “Aria Property” identified in Paragraph B below, any and all of which are herein collectively referred to as the “**Aria**”).

Each of 1307 Association and Aria is sometimes herein individually referred to as a “**Party**” and both are sometimes herein collectively referred to as the “**Parties**.”

RECITALS:

A. 1307 Association is the condominium association that represents and is comprised of the owners of condominium units located on the real property known as 1307 Clifton Street, N.W., Washington, D.C. (Square 2866, Lot 70), as more particularly described in **Exhibit A** attached hereto and made a part hereof (the “**1307 Property**”).

B. The 1307 Property is improved with a four-story residential building that encompasses the condominium units included in the 1307 Association (the “**1307 Building**”).

C. Aria is the owner of certain real property known as 1309-1315 Clifton Street, N.W., Washington, D.C. (Square 2866, Lots 831 and 838), adjacent to the 1307 Property to the west, as more particularly described in **Exhibit B** attached hereto and made a part hereof (the “**Aria Property**”).

D. Aria intends to demolish most of the existing buildings on the Aria Property and construct a new multi-family residential complex and associated improvements on the Aria Property (collectively, the “**Project**”).

E. Aria has applied to the D.C. Zoning Commission for approval of a planned unit development and related Zoning Map amendment (Z.C. Case No. 15-03) to allow construction of the Project (the “**ZC Case**”).

F. The Parties desire to enter into this Agreement in order to, among other things, memorialize their agreements to protect the 1307 Property during the construction of the Project, ensure that the Project will not have an adverse impact on the 1307 Property, ensure the 1307 Association’s support for the ZC Case, and otherwise agree as more particularly set forth herein.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each Party to the other, the receipt and

sufficiency of which are hereby acknowledged, the Parties do hereby grant, convey, declare, create, impose, establish and agree as follows:

1. **Survey and Monitoring of 1307 Property.** Prior to the commencement of the construction work on the Project, Aria will undertake at its own expense a video and/or photographic survey of the party wall along the western side of the 1307 Property to document the state of the 1307 Property and the interior surface of 1307 Association's wall along the property line. In addition, Aria will survey individual condominium units, at the unit owner's election, to document the condition of any such condominium units. Aria will provide to 1307 Association a copy of such survey(s) prior to commencement of the excavation on the Aria Property. Aria will undertake at its own expense a subsequent video and/or photographic survey of the same portions of the 1307 Property, including individual condominium units, upon the completion of the Project to document any impact the construction of the Project had on the 1307 Property. These pre- and post-construction surveys will be prepared by an independent professional, with the same independent professional conducting both surveys. 1307 Association hereby grants to Aria and its agents, servants, and employees the right to (i) enter the 1307 Property (including condominium units if granted by individual owners) to conduct the pre- and post-construction surveys, (ii) attach monitoring equipment (which may include tape, reflectors, crack monitors and/or seismic monitors) to the improvements located on the 1307 Property in order to establish survey benchmarks for monitoring any movement of improvements on the 1307 Property, and (iii) enter upon the 1307 Property at all reasonable times prior to commencing and during the conduct of the work on the Project for purposes of inspecting any work on the 1307 Association's Property and for monitoring the physical condition of improvements located on the 1307 Property.

1.1 **Surveys Obtained To Date.** By no later than five (5) days after the execution of this Agreement, Aria shall give to 1307 Association all surveys and written documentation of the 1307 Project obtained by Aria in connection with the Project, including surveys and/or other documents setting forth the boundaries of the 1307 Association's property.

2. **Correction of Work.** If any structural engineer or other consulting engineer engaged by 1307 Association ("**Reporting Consultant**") determines that any work planned by Aria or any work performed by Aria may cause or has caused, any risk to the structural integrity of the 1307 Association's parcel or any improvements located thereon, the 1307 Association shall provide written notice to Aria of such concerns related to Aria's work (a "**Structural Notice**"). Aria shall then have ten (10) days to either correct such work to the Reporting Consultant's satisfaction, which shall not be unreasonably withheld, conditioned or delayed, or to provide a written response objecting to the Structural Notice (a "**Structural Response Notice**"). If Aria sends a Structural Response Notice, then representatives from the Reporting Consultant and Aria shall meet within five (5) days following the 1307 Association's receipt of the Structural Response Notice to discuss the parties' respective positions in an attempt to reach an amicable resolution to address the parties' concerns. If the parties cannot reach agreement at such meeting, then the parties shall use the Expedited Dispute Resolution provisions set forth in Paragraph 13 herein. Aria shall not perform any construction or work on or adjacent to the 1307 Association's parcel until such time as the parties mutually agree that any dispute has been resolved or until completion of the Expedited Dispute Resolution procedures set forth in Paragraph 13 herein.

3. **Payment of 1307 Association's Consulting Costs.**

3.1 **Consulting Fees.** 1307 Association intends to retain structural, geotechnical and/or other consulting engineers, and an attorney (together, the "1307 Consultants") for the purpose of reviewing documents, providing comments, and advising 1307 Association regarding (a) the pre- and post-construction reviews and monitoring pursuant to Section 1 of this Agreement; (b) protective measures and construction practices; (c) damage, if any, to the 1307 Property; and (d) reviewing and negotiating this Agreement. Aria agrees to pay for all reasonable consulting fees, up to a maximum of [REDACTED] incurred by 1307 Association in connection with the Project. 1307 Association agrees to use good faith efforts to keep such fees to reasonable amounts.

3.2 **Advance of Fees.** Within 5 days after the effective date of this Agreement, Aria will remit payment of [REDACTED] to the 1307 Association for its applicable consulting costs. If, after the work of all consultants is complete, any of the funds advanced by Aria are unused, then the 1307 Association will promptly return such unused funds to Aria. In the event the 1307 Association uses all of the initial [REDACTED] it shall submit written notice to Aria in accordance with Section 14.5 herein of the need for Aria to remit [REDACTED] to the 1307 Association. Aria shall remit [REDACTED] within five (5) days of the date of 1307 Association's written notice for this remaining sum of advance fees.

4. **Construction and Use Requirements for Aria.** In addition to and not in lieu of any other requirements set forth in this Agreement, any construction, use, maintenance, repair, replacement or other work performed pursuant to this Agreement on the 1307 Property will be performed subject to the following terms and conditions:

4.1 **Permits and Approvals.** Aria shall obtain all necessary governmental permits, licenses, land use approvals and will pay all charges and fees associated with obtaining such permits, licenses and approvals as and when due.

4.2 **Performance Standards and Indemnity.** All work that Aria performs pursuant to the rights granted in this Agreement will be performed in a good, safe, secure and workmanlike manner and such work will be in accordance with the standards of the trade and applicable law. Aria hereby agrees to indemnify, defend and hold harmless 1307 Association and their respective members, directors, agents, managers, officers, and employees, from and against any and all liability for personal injury, death or property damage (including, but not limited to, damage to the improvements or any vehicles on the 1307 Property) arising out of or resulting from any act or omission on the part of Aria or its agents, employees, contractors, subcontractors, consultants or representatives in connection with the performance of the work specified herein. The provisions of this Section 4.2 will terminate upon the issuance of a Certificate of Occupancy for the Project. Aria shall be fully responsible for the security of its real and personal property, whether owned or leased, at all times. 1307 Association shall have no bailment responsibility, and shall not be liable or responsible for the safety or security of any item or property owned or leased by Aria.

4.3 **Parking and Deliveries.** Aria shall take all reasonable precautions to ensure its contractors and sub-contractors provide and require valid parking for all workers or

others involved in the Project. Aria shall also require that contractors and sub-contractors ensure that operators of all construction vehicles hold valid licenses to operate their vehicles. Aria will ensure that its contractors and subcontractors do not use the driveway on Clifton Street (which 1307 Association's residents use to access the garage) for parking, delivery, idling or any other purpose, and Aria shall use commercially reasonable efforts to ensure that such driveway is not otherwise obstructed during construction of the Project.

4.4 **Cleanliness and Dust.** Aria shall minimize dust and any demolition or construction-related debris on the 1307 Property by watering down surfaces prior to the commencement of demolition and construction activity that is likely to generate dust and by taking such other measures as are reasonably necessary to minimize dust. Aria shall, within thirty (30) days after the completion of the Project, wash the vertical surfaces of the exterior of 1307 Property.

4.5 **Limited Interference with 1307 Property.** Aria will conduct its activities permitted hereunder at Aria's sole cost and expense and in a manner that will not unreasonably interfere with or disturb 1307 Association's residents, assignees or other invitees' activities within the 1307 Property. Aria shall not permit or cause noises louder than 60 dB to occur at 1309-1315 Clifton St., N.W. (i) between the hours of 7:00pm and 7:00am on regular business days; (ii) prior to 7:00am and after 7:00pm on Saturdays; or (iii) prior to 10:00am and after 6:00pm on Sundays and Federal Holidays.

5. **Design Issues.**

5.1 **Windows on the Project's East Wall.** Any windows located on the eastern wall of the Project that extend past the rear of the 1307 Building (i.e., the wall along the easternmost property line that will face the rear of the 1307 Property) that are within fifteen (15) feet from the northern wall of the 1307 Building either will be made from fritted or frosted glass or will be removed to obscure visibility into the condominium units that have windows along the northern wall of the 1307 Building. No windows shall be installed from the grade of the alley upwards ten (10) feet along the wall that is on the easternmost property line of the Project without advance written permission from the 1307 Association.

5.2 **Architectural Plans for the Project.** Aria shall not materially increase the height, width, depth, or shape of the Project from the dimensions depicted in those certain architectural plans dated October 5, 2015 (attached hereto as **Exhibit C**), without first discussing such changes with and seeking input from 1307 Association. Aria also agrees not to construct any portion of the Project to directly obstruct existing windows on the 1307 Building.

5.3 **Flashing.** Aria shall design and install an effective flashing system to prevent penetration of water between the 1307 Building and the Project or into the 1307 Building. This flashing system will be designed and installed in a good workmanlike manner, and based on industry standards. Aria will design and install the flashing system in a timely manner, to prevent the penetration of water between 1307 Building and the Project.

6. **Maintenance Obligations.** If the Project touches any portion of the 1307 Building, the Parties shall enter into a Shared Maintenance and Easement Agreement to provide

each party with reasonable access to the other's property to perform any necessary maintenance, subject to mutually acceptable terms relating to notice, restoration and indemnification, along with appropriate cost sharing provisions related to any components benefitting both the Project and 1307 Association.

7. **Safety and Security.** Aria shall take reasonable steps to secure and safeguard the portions of 1307 Association affected by the Project.

8. **Repairs to 1307 Property.** Aria, at its sole cost and expense, will promptly repair in a good and workmanlike fashion any and all physical damage to the 1307 Property caused by the performance of the work on the Project described herein or other physical damage caused by the construction of the Project. If Aria fails to repair such damage as required by this Agreement within a commercially reasonable timeframe, then 1307 Association will have the right, but not the obligation, to do so at Aria's sole cost and expense, and Aria will cooperate with such repair work. 1307 Association understands that Aria may seek to enter separate agreements with unit owners in the 1307 Building to plan for remediating damage to Units of the 1307 Building, and that Aria may seek these agreements in conjunction with accomplishing the surveys and inspections contemplated by Section 1 and in other parts of this Agreement.

9. **Insurance.** Aria shall obtain or arrange for and maintain in force and effect during any time when Aria is exercising any rights granted under this Agreement and until construction of the Project is completed, commercial general liability insurance on an occurrence basis covering personal injury, death or property damage in the amount of at least [REDACTED] per occurrence and [REDACTED] in the aggregate, on a project-specific basis, inclusive of any excess or umbrella liability coverage. Such insurance (i) will be issued by companies authorized to do business in the District of Columbia with a financial strength and claims paying ability rating of at least A- Class VIII in the latest edition of A.M. Best's Insurance Guide, and (ii) will name 1307 Association as an additional insured for the periods when Aria is conducting construction-related work on the 1307 Property. Certificate(s) evidencing such insurance coverage will be delivered to 1307 Association prior to entry by Aria onto the 1307 Property, and certificate(s) evidencing the renewal of such insurance coverage will be delivered prior to the expiration date of any coverage for which certificate(s) were originally furnished. Aria will give notice to 1307 Association forthwith after becoming aware that any coverage under any policy of insurance required to be maintained by Aria hereunder is to be materially changed or canceled by the issuing company.

10. **Temporary Construction Licenses.** 1307 Association and Aria hereby agree to enter into a separate written agreement (or an amendment to this Agreement) that is mutually satisfactory to both Parties, in their reasonable discretion, if Aria requires any temporary construction licenses to construct the Project, including, but not limited to, licenses related to a crane swing over the 1307 Property, installation of underpinning and/or tie-backs under the 1307 Property, and access to the 1307 Property. Such separate written agreement (or amendment) may also establish access license(s) that either Party may require to properly and safely perform maintenance on its own building from the other Party's property, e.g., an access license for 1307 Association to perform maintenance on its wall from the east court to be built on the Aria Property in connection with the Project.

11. **Support for Approval of the Project.** Within five (5) Business Days after the effective date of this Agreement, the 1307 Association will send a letter to both Advisory Neighborhood Commission 1B and the Zoning Commission stating its unconditional support for approving the ZC Case and the Project. The letter shall be in the form substantially similar to that attached as **Exhibit D.**

12. **Aria Representative.** Aria shall provide 1307 Association with the name, title and contact information of a representative who is able and willing to timely respond to requests, and questions from 1307 Association. Aria may from time to time change its representative designated for this purpose, but at all times, Aria shall notify 1307 Association of who the representative is, and how to contact him/her. In the event the Aria representative is unresponsive to the Association, the Association may contact the lawyers for Aria and/or persons listed on Aria websites and/or with the District of Columbia as executives with Aria.

13. **Performance of Obligations; Dispute Resolution.**

13.1 In the event a dispute regarding the enforcement or interpretation of this Agreement or any matter arising out of this Agreement or the implementation of the Project arises, and the Parties fail to resolve the dispute following the meeting required under Paragraph 2 herein, any Party shall have the right, by written notice given promptly to the other Party, require that the dispute be resolved through an expedited binding arbitration procedure. Upon any Party providing written notice to arbitrate a dispute, the Parties shall agree within five (5) business days on an arbitrator. If the Parties are unable to agree on an arbitrator within such five (5) day period, each Party shall select an arbitrator within five (5) business days and the two (2) arbitrators shall agree on the selection of a third arbitrator who shall be the arbitrator to hear the dispute. The Parties agree that, but for the selection of the arbitrator (which shall proceed as outlined above), the arbitration shall proceed in accordance with the JAMS Streamlined Arbitration Rules and Procedures effective as of November 1, 2015. The arbitration need not be administered by JAMS so long as the procedures are followed. However, if there is any dispute between the Parties as to the procedures, the arbitration shall be administered by JAMS.

Notwithstanding the giving of notice of arbitration as provided above, the Parties agree that they shall endeavor to resolve their disputes by mediation which, unless the Parties mutually agree otherwise, shall be administered by JAMS and shall be scheduled promptly upon completion of the initial meeting. The request may be made concurrently with the notice of arbitration but, unless otherwise agreed by the Parties, mediation shall proceed in advance of arbitration, but without delaying the scheduling of the arbitration and the selecting of arbitrators.

13.2 If the dispute proceeds to arbitration, it shall be conducted as a final and binding arbitration, without appeal or review. The substantially prevailing party in any arbitration, suit or other action arising out of or related to this Agreement shall be entitled to recover from the other Party all reasonable fees, costs, and expenses incurred by the substantially prevailing Party in connection with the action, including reasonable attorneys' fees, expenses, and disbursements, and fees, costs, and expenses relating to any arbitration or appeal. If any Party secures a judgment in any proceeding brought to enforce or interpret this Agreement, then any costs or expenses (including reasonable attorneys' fees) incurred in enforcing, or in appealing from, such

judgment shall be payable by the Party against whom such judgment has been rendered and shall be recoverable separately from and in addition to any other amount included in such judgment.

14. **Miscellaneous.**

14.1 **Successors-in-Title.** The provisions of this Agreement will apply to, inure to the benefit of and be binding upon the 1307 Property and the Aria Property and any successor owners of all or any portion thereof. The selling or conveying party will have no rights, obligations, or liabilities hereunder accruing after the date of such sale or conveyance. All assignees or successors of Aria or 1307 Association will assume all rights, obligations, and liabilities hereunder accruing with respect to the portion of the property sold or conveyed before, on, and after the date of such transfer.

14.2 **Reservation of Rights.** The Parties hereby expressly reserve for themselves and their successors in title with respect to the 1307 Property or the Aria Property, as the case may be, all rights and privileges incident to the ownership of the fee simple estate of such property as are not inconsistent with nor materially interfere with the rights and privileges herein granted.

14.3 **Time for Performance.** For purposes of this Agreement, the term “**Business Day**” means a calendar day other than a Saturday, Sunday or legal holiday observed by the District of Columbia. For purposes of this Agreement, whenever the date for performance of any obligation hereunder falls on a Saturday, Sunday or legal holiday observed by the District of Columbia, such obligation will be performed by not later than the next following Business Day.

14.4 **Effect of Agreement.** If the Zoning Commission denies or does not approve the ZC Case, then this Agreement shall be null and void. Similarly, if Aria cannot construct the Project as approved because of any appeal, litigation, or other contest of entitlements, then this Agreement shall be null and void. Furthermore, if the 1307 Association induces, assists, or joins any condominium association, tenants association, cooperative, community organization, or person to oppose or interfere with any aspect of the Project, then this Agreement shall be null and void.

14.5 **Notices.** All notices or other communications required or permitted hereunder will be in writing (including by email) and will be sent to the parties at the following addresses, respectively:

<u>If to 1307 Association:</u>	1820 Florida Ave., N.W. Washington, DC 20009 Attn: Bobby Pheasant, Community Manager Phone: 202.986.2946 Email: bpheasant@premiumrei.com
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With copy to:	Rees Broome, PC 1900 Gallows Road, Suite 700 Tysons Corner, VA 22182
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Attn: Mary N. ("Molly") Peacock, Esq.
Phone: 703.790.1911
Email: mpeacock@reesbroome.com

and

Board of Directors
Courtyards on Clifton Condominium Association
1307 Clifton St., N.W.
Washington, DC 20009

If to Aria:

c/o Aria Development Group
150 E. 58th Street, 28th Floor
New York, NY 10155
Attn: Joshua Benaim
Email: jb@ariadevelopmentgroup.com

With copy to:

Goulston & Storrs PC
1999 K Street N.W., Suite 500
Washington, DC 20006
Attn: Cary R. Kadlecek, Esq.
Phone: 202.721.1113
Email: ckadlecek@goulstonstorrs.com

Any such notice or other communication will be (i) sent by certified mail, postage prepaid, return receipt requested, in which case the same will be deemed given upon deposit in the United States mail and will be deemed received upon receipt or upon the first day on which delivery is attempted, (ii) sent by a nationally recognized overnight courier, in which case the same will be deemed given upon deposit with such courier and will be deemed received upon receipt or upon the first day on which delivery is attempted, or (iii) delivered by hand, in which case the same will be deemed given and received upon such delivery, if delivered during normal business hours on a Business Day, and otherwise on the next Business Day. The above addresses may be changed by written notice to the other Party as provided above.

14.6 **Estoppel Certificates.** Recognizing that either Party may find it necessary to establish to third party prospective purchasers, lenders, tenants, investors and others acquiring an interest in a property burdened by this Agreement, the then current status of performance hereunder, each Party, within ten (10) days after the request of the other Party made from time to time, will furnish to the requesting Party, an estoppel certificate in a form satisfactory to the requesting Party, addressed to the requesting Party and any such third parties, relative to the status of any matter pertaining to this Agreement, including acknowledgments that (or the extent to which) each Party is in compliance with its obligations under the terms of this Agreement. Any such estoppel certificate may be qualified to the best knowledge of the Party providing same. A request for an estoppel certificate must be made no later than two (2) years after the completion of the Project.

14.7 **No Implied Consent or Waiver.** No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance by such other Party of the obligations thereof under this Agreement will be deemed or construed to

be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement.

14.8 **Severability**. If any term or provision of this Agreement, will be invalid or unenforceable, then the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and enforceable.

14.9 **Amendment**. All amendments to this Agreement must be in writing and signed by both Parties.

14.10 **Interpretation**. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

14.11 **Governing Law**. This Agreement and the obligations of the Parties hereunder will be interpreted, construed, and enforced in accordance with the laws of the District of Columbia.

14.12 **Counterparts; Electronic Signatures**. This Agreement may be executed in two or more counterparts, and by each or either of the parties in separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery by electronic mail file attachment of any executed counterpart of this Agreement will be deemed the equivalent of the delivery of the original executed instrument.

[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal as of the day and year first above written.

SIGNED, SEALED AND
DELIVERED IN
THE PRESENCE OF:

1307 ASSOCIATION:

**The Courtyards on Clifton Condominium
Association, a District of Columbia
condominium association**


(Signature of Witness #1)


(Signature of Witness #2)

By: Benjamin Berlin
Name: Benjamin Berlin
Title: Officer / Director

DISTRICT OF COLUMBIA)
)
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015,
by _____, the _____ of Courtyards on Clifton Condominium Association.

_____(SEAL)
NOTARY PUBLIC
MY COMMISSION EXPIRES _____

[Signatures continued on following page]

SIGNED, SEALED AND
DELIVERED IN
THE PRESENCE OF:

ARIA:

CLIFTON STREET ACQUISITION LLC, a
Delaware limited liability company

(Signature of Witness #1)

By: _____

Name: _____

Title: _____

YURI POLAKOV
VICE PRESIDENT

(Signature of Witness #2)

County of New York)

)

State of New York)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015,
by _____, the _____ of CLIFTON STREET ACQUISITION LLC.

_____(SEAL)
NOTARY PUBLIC

MY COMMISSION EXPIRES _____