

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Escrow Agreement”) is made this ____ day of _____, 2016, among 301 FL Manager LLC (the “Applicant”) and _____ (the “Escrow Agent”) (together, the “Parties”).

WITNESSETH:

WHEREAS, on September 4, 2015, the Applicant submitted an application to the Zoning Commission for the District of Columbia (the “Zoning Commission”) for consolidated review and approval of a planned unit development (“PUD”) and a related Zoning Map amendment to rezone 301 Florida Avenue, NE (Square 772N, Lot 803) (the “Property”) from the C-M-1 District to the C-3-C District (Zoning Commission application hereinafter referred to as “Z.C. Case No. 15-22”).

WHEREAS, as part of the public benefits package associated with Z.C. Case No. 15-22, which is required pursuant to Section 2403.6 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”), and at the request of Advisory Neighborhood Commissioner Tony Goodman (Single Member District 6D06), the Applicant agreed to place \$125,000 (the “Funds”) into an escrow account in order to support the construction of enhanced pedestrian improvements on N Street, NE, between Florida Avenue, NE to the east and 3rd Street, NE to the west, and as depicted on the plat attached hereto as Exhibit A, in order to create a pedestrian-oriented plaza (the “N Street Plaza”).

WHEREAS, the Applicant wishes to appoint the Escrow Agent to act as the escrow agent under the terms of this Escrow Agreement, and the Escrow Agent has agreed to accept such appointment under the terms of this Escrow Agreement.

WHEREAS, the Funds may be used for the following items and activities related to the creation of the N Street Plaza, including, but not limited to: building permit or public space application fees, feasibility studies and plans, construction drawings, excavation, and construction materials and work, including the installation of curbs and gutters, pavers, landscaping, inlets and stormwater management features, irrigation, and streetscape furnishings (the “Work Items”).

WHEREAS, in the event the Zoning Commission approves Z.C. Case No. 15-22, including the public benefit to support the creation of the N Street Plaza, the Applicant will deposit the Funds into an escrow account, with such Funds to be used to pay for the Work Items.

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated herein by this reference as substantive provisions of this Escrow Agreement and not mere recitals.
2. Deposit of Funds.
 - a. The Applicant shall deposit the Funds into escrow with the Escrow Agent in five equal installments no later than 30 days after completion of the following events:

- i. Issuance of Zoning Commission Order No. 15-22, as evidenced by its publication in the *DC Register*, and the expiration of the statutory appeal period without any filings for an appeal;
 - ii. Issuance of a building permit authorizing construction of the building approved pursuant to Z.C. Order No. 15-22 (the “Building”);
 - iii. Issuance of a Notice to Proceed by the Applicant to a general contractor for construction of the Building;
 - iv. Confirmation that the Building “topped out” at its approved maximum height of 101 feet, as confirmed by the general contractor in writing to the Applicant; and
 - v. Issuance of a Certificate of Occupancy for the Building.
 - b. Each time that the Applicant places a portion of the Funds identified in Section 2(a)(i-v) of this Escrow Agreement into escrow, the Escrow Agent shall acknowledge in writing the receipt of that portion of the Funds to the Applicant. The Funds may be held in the Escrow Agent’s regular non-interest bearing escrow account.
3. Payment for Work Items.
 - a. In order to obtain payment from the Escrow Agent, the Applicant or the contractor(s) producing or procuring the Work Items shall provide the Escrow Agent with proof that (i) the Work Items have been provided or satisfactorily completed; or (ii) the materials have been paid for and purchased by the Applicant or the contractor(s). The Escrow Agent shall be required to obtain appropriate documentation from the Applicant or the contractor(s) before disbursing funds. The documentation shall include, but is not limited to, a signed statement or a valid invoice from the Applicant or the contractor(s) indicating that the Work Items have been provided or completed satisfactorily, or that the materials have been purchased.
 - b. If a deposit is required as an advance for purchasing materials, before releasing funds from escrow to pay for such deposit(s) or materials, the Escrow Agent shall obtain appropriate documentation confirming the need for and amount of deposit(s) or materials. The documentation shall include, but is not limited to, a signed statement or a valid invoice from the contractor(s) requesting the release and amount of such funds for deposit(s) or materials.
 - c. Prior to disbursing payments, Escrow Agent shall submit to the Applicant the relevant documentation from the contractor(s) as listed in Sections 3(a)-(b) of this Escrow Agreement. Escrow Agent shall disburse funds to the contractor(s) seven business days after receipt of the relevant documentation, unless objection is received within such seven day period from the Applicant. Applicant shall be

entitled to object to any payment(s) to the extent that the payment(s) are not reasonably related to the advancement of the Work Items or are inconsistent with the requirements in this Escrow Agreement or the PUD Order.

- d. In the event the Applicant objects to the disbursement of the funds in accordance with c. above, the Escrow Agent shall continue to hold the requested funds until such time as the Escrow Agent receives joint instructions from the contractor and the Applicant directing the Escrow Agent to release such funds. The Applicant shall provide contractor with copies of any notice given to the Escrow Agent objecting to the release of the funds.

4. In the event that the Work Items are not provided or that N Street Plaza is not enhanced by September 18, 2019, then the Escrow Agent shall release to the NOMA Business Improvement District (“BID”) any remaining Funds deposited with the Escrow Agent to be used by the NOMA BID for improvements to parks and public space within the boundaries of Advisory Neighborhood Commission (“ANC”) 6C. The Escrow Agent shall obtain written confirmation from the NOMA BID that the Funds will be expended on improvements to parks and public space that have been or are being provided within the boundaries of ANC 6C.

5. **LIMITATIONS OF LIABILITY.** The foregoing instructions are subject to the following provisions which are expressly approved by the Applicant:

5.1 **DEPOSITORY DUTY.** The Escrow Agent shall be liable as a depository only and shall not be responsible for the sufficiency or accuracy of the form, execution or validity of any document delivered to the Escrow Agent hereunder or any authority or rights of the persons executing or delivering or purporting to execute or deliver any such document. The Escrow Agent’s duties hereunder are limited to the safekeeping of the escrow money deposit and the delivery of the same in accordance with this Escrow Agreement.

5.2 **STANDARD OF CARE.** The Escrow Agent shall not be liable for any act or omission done in good faith, or for any claim, demand, loss or damage made or suffered by any party to this Escrow Agreement, excepting such as may arise through or be caused by the Escrow Agent’s willful misconduct or gross negligence.

5.3 **RELIANCE.** The Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received by the Escrow Agent. The Escrow Agent is authorized to rely on any document believed by the Escrow Agent to be authentic in making any delivery of funds hereunder. The Escrow Agent shall in no way be responsible or have any duty to notify any person interested in the escrow money deposit of any maturity under the terms of this Escrow Agreement or any document deposited herewith or described herein.

5.4 **TERMINATION.** The Escrow Agent shall have the right to terminate its duty as Escrow Agent under this Escrow Agreement by written notice of termination to the Applicant and delivery of the escrowed funds to a Substitute Escrow Agent as chosen by the Applicant. Such delivery will relieve the Escrow Agent from any further performance and liability with respect to this Escrow Agreement. Any modification of the terms of this Escrow

Agreement may be made at any time by the Applicant, provided that the same is reduced in writing, delivered to and accepted by the Escrow Agent.

5.5 SOLE AGREEMENT. This Escrow Agreement is the only agreement binding on the Escrow Agent relating to the escrowed Funds, and the Escrow Agent may rely absolutely hereon to the exclusion of any and all other agreements between the Applicant and other persons or entities.

6. DISPUTE. Should any dispute arise under this Escrow Agreement, then the Escrow Agent may interplead the Funds held into court. Any costs and reasonable attorney's fees for interpleading such Funds into court by the Escrow Agent will be borne by the Applicant as the court directs and orders.

7. MISCELLANEOUS. It is further agreed as follows:

7.1 TIME. Time is of the essence in this Escrow Agreement. Notwithstanding the foregoing, in the event that the Applicant is unable to complete any portion of the work within the time frame set forth herein as the result of the circumstances beyond its control, including but not limited to weather conditions or the inability of suppliers to deliver goods, the Applicant shall have a reasonable time thereafter to complete the Work Items.

7.2 NOTICES. All notices given hereunder will be in writing and served by regular first-class mail, postage prepaid, to the Parties at the following addresses:

Applicant:

301 FL Manager LLC
c/o Ditto Residential
2217 14th Street, NW
Suite 300
Washington, DC 20009

Escrow Agent:

LP Title LLC
Attention: Cathy Gayle
4725 Wisconsin Ave., N.W.
Suite 250
Washington DC 20016

7.3 ASSIGNMENT. None of the rights of the Applicant may be assigned voluntarily or by operation of law. Any such assignment by any party without the prior written approval of the other Parties to this Escrow Agreement shall be null and void ab initio.

7.4 BINDING EFFECT. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns.

IN WITNESS WHEREOF, this Escrow Agreement has been executed and delivered the date first above written.

APPLICANT

INSERT SIGNATURE BLOCK

ESCROW AGENT

LP Title LLC

By: _____
Lane H. Potkin, Authorized Member