

EXHIBIT E

Development Agreement

This Development Agreement (“Agreement”) is made and entered into as of this first day of March, 2016 (“Effective Date”) by and among MR 618 T Contract LLC (“Developer”) and Advisory Neighborhood Commission 6E (“ANC 6E”) (collectively, the “Parties”).

RECITALS

- 1. Property.** MR 618 T Contract LLC is one of the contract purchasers and Developer of property located on Lots 32, 33, 35, and 852 in Square 441 with premises addresses 608, 610, 614 and 618 T Street, N.W. (the “Property”) all included within the boundaries of ANC 6E.
- 2. Introduction.** The Developer desires to redevelop the Property with a multi-story mixed-use retail and residential development (“Project”) that will preserve and incorporate into the Project some of the existing street-facing facades. In conjunction with the Project, the Developer and representatives of ANC 6E met on multiple occasions. As a result of these meetings, the Developer and ANC 6E desire to enter into this Agreement to set forth the specific terms and conditions for the Project, including any required Board of Zoning Adjustment (“BZA”) approval of the Project.
- 3. Zoning.** The Property is zoned C-2-B and located within the ARTS Overlay District.
- 4. Historic Preservation.** The Property is not currently a historic landmark or located within a historic district.
- 5. Proposed Development.** Developer plans to construct a seven-story with penthouse building with ground floor retail that complies with the overall height and floor area ratio (FAR) permitted in the ARTS/C-2-B Zone district. The Project will include Inclusionary Zoning

affordable dwelling units, loading facilities and below-grade parking. The Project may require zoning relief for height of building related to the parapet wall and reduced loading facilities from the BZA (“Required Zoning Relief”).

6. **Facade/Building Preservation.** The Project will preserve and incorporate with some minor modifications the above-grade street-facing elevations of 610 T Street, N.W. and 618 T Street, N.W. (“Facades”) which ANC 6E believes are character defining elements that reflect the historical development of the Shaw neighborhood. The Facades shall include the building structures fronting T Street and the first approximately 25 feet of the frontage of 618 T Street along Wiltberger Street, N.W. The Project will not include preservation or restoration of the interiors of the buildings at 610 T Street, N.W. and 618 T Street, N.W.

7. **Project Benefit.** ANC 6E agrees that development of the Property for residential and retail uses will be beneficial to the neighborhood by adding multi-family housing and neighborhood serving retail uses in a transit-served location and adding to the population and tax base for the city.

8. **Agreement.** The Parties desire to enter into this Agreement to set forth certain specific commitments and agreements for the Project, including the treatment of the Facades and Required Zoning Relief for the proposed development.

NOW THEREFORE, in consideration of the foregoing Recitals, which are a material part of this Agreement, the Parties agree as follows:

9. **Development Plans.** The development of the Project shall be in accordance with the recitals above and as approved by the BZA for the Required Zoning Relief, including the following:

A. Developer shall preserve and rehabilitate the Facades located on the Property as provided in this Agreement with some minor modifications, as indicated on the renderings dated 3/1/16 and incorporate the rehabilitated Facades into the Project. Developer shall preserve and maintain the Facades, so incorporated, after completion of the Project, and make the continuation of such preservation and maintenance by any successor owner of the Property a binding condition of any future sale or other transfer of the Project.

B. As part of the demolition operations and construction of the Project, Developer shall detach the Facades and support and preserve such Facades in place until the Facades are affixed to new improvements to be constructed behind and above said Facades. In the event any element(s) of the Facades are damaged during construction, Developer shall reconstruct said element(s) in accordance with the standards established by the United States Secretary of the Interior. This shall include, if necessary, the complete reconstruction of the Facades.

C. In recognition of the historic name of the business formerly located at 618 T Street, NW and the business and building's historic owner, Developer agrees to consider naming the development "The Cecelia."

10. **Replacement of Glass, Door, Windows.** The Parties acknowledge Developer may replace the existing doors and windows that now enclose the facade openings with other

materials, and replace and/or remove the supporting metalwork and masonry ground-level bases/sills in order to facilitate entrance(s) to the Project, so long as the appearance of the doors and windows are in keeping with the character of the types of doors and windows that were used historically, with any material deviations from the windows and doors shown in the 3/1/16 plans to be approved by ANC 6E. Openings may be moved and/or enlarged in keeping with the plans dated 3/1/16.

11. Signage. Developer may install appropriate signage in accordance with District of Columbia law.

12. ANC 6E agrees not to object to, and will support if third-party objections are raised, Developer's efforts to obtain the necessary permits to demolish the existing improvements on the Property, EXCEPTING THE FACADES. At Developer's request, ANC 6E will inform District of Columbia authorities and applicable third parties in writing that they do not object, so long as the permits sought conform to the terms of this Agreement.

13. ANC 6E shall not file, pursue or support any application to designate the Property or improvements thereon or a portion thereof as a local or federal landmark or to include the Property or improvements thereon or a portion thereof in a Historic District. Should a landmark designation application be filed by any other individual or organization or the Property be proposed for inclusion in an Historic District, the Parties agree to notify the reviewing authorities of the terms of this Agreement.

14. ANC 6E shall not file, pursue or support any opposition to the Developer's application for the Required Zoning Relief. Further, ANC 6E will submit a statement of support with the BZA for the Required Zoning Relief. ANC 6E will not object to, delay or oppose Developer's

efforts to obtain all necessary permits and other approvals required to complete the Project in accordance with this Agreement.

15. In the event that the Property becomes subject to the jurisdiction of the Historic Preservation Review Board and/or the Required Zoning Relief is not approved by the BZA, Developer in its sole discretion may terminate this Agreement by providing written notice to ANC 6E.

16. **Incorporation of Conditions.** In addition to the enforcement rights of the Parties, the approved BZA conditions and the BZA approval of the Required Zoning Relief shall be incorporated into any permits required and issued by the District of Columbia and enforceable by the Office of Zoning, the Zoning Administrator and the Department of Consumer and Regulatory Affairs.

17. **Communication.** Developer shall:

- a. Designate a representative to be the key contact during the construction period who is authorized to address complaints and respond to inquiries as the key contact for ANC 6E and neighboring residential property owners regarding construction activities (“Representative”). The Developer will provide ANC 6E and neighboring residential property owners with the Representative’s name, telephone number, cell phone number and e-mail address.
- b. Establish a 24-hour telephone number for nearby residents to report emergency situations related to the Project.

- c. Provide the telephone number of Developer's construction supervisor to nearby residents for the purpose of reporting non-emergency situations, express concerns and to make inquiries.

Upon ANC 6E's request, Developer and ANC 6E shall work together to mutually agree on further details regarding access and communication prior to the commencement of construction.

18. Residential Parking Permits. Developer agrees to restrict the residents of the Project from being eligible to receive Zone 6 Residential Parking Permits (RPP) and/or Visitor Parking Permits (VPP) administered by DDOT. ANC 6E agrees to the imposition of these restrictions. All such restrictions on RPP and/or VPP will be properly documented and disclosed by the Developer in all covenants, condominium documents, sales contracts and/or leases for the Project.

19. Through Traffic on 600 Block of T Street, NW. Developer agrees that through traffic on the 600 block of T Street shall not be obstructed except when absolutely necessary to ensure public safety and at such times when it is otherwise impossible to accomplish construction activities. Whenever possible during such temporary closures, eastbound vehicles shall be diverted south onto the north/south alley between the Howard Theatre and 624 T Street, NW, with flag men stationed at the S Street entrance to the alley to ensure no northbound traffic is allowed to enter the alley. Notification via email, Robocall, and printed notices delivered to each impacted resident and business on the 600 block of T Street shall be provided not less than forty-eight (48) hours prior to any temporary closure of the Alley. During such closures, Developer shall work with businesses on the 600 block of T Street to accommodate deliveries to said businesses.

20. **Alley Access.** Developer agrees that the north/south alley at the east side of the Site (the “Alley”) shall only be closed when absolutely necessary to ensure public safety and at such times when it is otherwise impossible to accomplish construction activities and permit residents to access their off street parking spaces from the alley. Notification via email, Robocall, and printed notices delivered to each impacted resident shall be provided not less than forty-eight (48) hours prior to any temporary closure of the Alley, in order to allow residents to make arrangements to remove their cars prior to the closure. On such occasions when residents are unable to move their cars out of or into their off street parking prior to a temporary closure, Developer shall reimburse impacted residents for the cost of commercial parking up to twelve (12) hours prior to the proposed closure and up to twelve (12) hours after the termination of said closure. Residents shall provide receipts noting the dates and hours when their vehicles were parked at a commercial parking facility, which must correspond to the hours of the temporary Alley closure, plus a twelve (12) hour window before and after the closure.

21. **Access to Wiltberger Street, NW.** Developer shall make all possible efforts to restrict temporary closures of Wiltberger Street to those occasions when such closures are absolutely necessary to ensure public safety and at such times when it is otherwise impossible to accomplish construction activities and permit residents to access their homes on Wiltberger Street via motor vehicles. Notification via email, Robocall, and printed notices delivered to each impacted resident shall be provided not less than forty-eight (48) hours prior to any temporary closure of the street. Whenever possible, only the segment of Wiltberger Street between T Street and the alley immediately to the south of T Street shall be closed, allowing access to the street through the north/south alley between the Howard Theatre and 624 T Street, NW and the alley

on the south side of the Howard Theatre and the parking lot at the south side of the Howard Theatre.

22. Off Site Parking for Residents. Developer agrees to work with the Howard Theatre, Howard University, Howard University Hospital, and Progression Place to identify parking spaces near the Site which can be used by impacted residents to temporarily park their vehicles at such times during the work day when temporary closures of the Alley or Wiltberger Street make it necessary to effect temporary closures of said thoroughfares. Developer shall be responsible for the cost of such arrangements, or shall reimburse impacted residents for the cost of commercial parking during such closures.

23. Construction Parking. Developer acknowledges that vehicular parking is extremely limited in the area near the Site and that to minimize the impact of construction on residents, agrees to require contractors and their employees to park in commercial facilities so as to not occupy Residential Parking or Residents Only parking spaces in the neighborhood adjacent to the Site.

24. Tie-Back & Overswing Agreement. Developer acknowledges that construction activities associated with the Development, including pile driving, have the potential to damage residents' real property and improvements and personal property through vibrations and collisions with construction vehicles, among other hazards. Developer may also propose to install a construction tower crane(s), the boom(s) of which may swing over the property of residents, and may desire to use tie-backs or other construction methods that may cross residents' property lines. In order to address such circumstances and conditions, Developer shall enter into agreements with residents modeled on the Tie-Back & Overswing Agreement between the

developer of Jefferson at Market Place and the owners of properties on the 1500 block of 8th Street, NW in 2012, a copy of which is attached as Appendix A. The specific terms and any compensation to be offered to residents is to be negotiated between the Developer and residents. ANC 6E shall not be a party to said agreements.

25. **Construction Hours.** The construction workweek will be as follows:

- A. Monday through Friday: 8:00am to 7:00pm
- B. Saturday: 8:00am to 4:00pm
- C. Sundays and Federal Holidays: No construction, except in emergencies and/or by Special Permit issued by DCRA.

26. **Repair of Damage to Adjacent Alley.** Developer (through its general contractor, required utility deposits and/or D.C. Water) shall be responsible for the prompt repair of any “cuts” it makes or which are made for its benefit into the surface of the public alley for utility or other work and for any damage to such road surfaces caused by its construction activities (exclusive of normal wear and tear and general public use of such alley).

27. **Cleanliness.** Developer shall be required to maintain a clean work-site and surrounding public alley, including removal of trash, dirt and mud, and other debris from construction activities at the end of each work day. No construction related trash or materials will be deposited in the private trash cans belonging to the residents.

28. **T Street Public Plaza.** Subject to obtaining all required approvals from DDOT and any other District agency, Developer desires to ensure the long-term attractiveness and maintenance of the public space on T Street in front of the Property (“Public Plaza”) for the use and

enjoyment of the neighborhood, residents of the Project, visitors and customers of the retail establishments. Developer and its successors and assigns (including a homeowner's association for the Project) will undertake either directly, through funding of a designated third-party (such as Shaw Main Streets) or other means to perform routine and periodic maintenance of the Public Plaza, including routine maintenance, watering and replacement of the landscaping, cleaning, and trash and snow removal. Developer and its successors and assigns will not be responsible for the repair and/or replacement of the permanent capital improvements, lighting and/or any other public infrastructure. The annual cost of this maintenance of the Public Plaza will not exceed \$5,500.00. Developer and its successors and assigns shall take any and all lawful measures to keep the Public Plaza free of loiterers and homeless people.

29. Modification. No modification of this Agreement shall be valid unless made in writing and duly executed by authorized representatives of the Parties. Developer may transfer or assign this Agreement to an affiliate of Developer and to other successors and assigns.

30. Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes any and all prior agreements and understandings between the Parties relating to the subject matter hereof.

31. Notices. All notices to Developer required to be given under this Agreement shall be addressed to:

MR 618 T Contract LLC
c/o Monument Realty
1700 K Street, N.W.
Suite 600
Washington, D.C. 20006
Attn.: Michael Darby and F. Russell Hines

With a copy to:

John Patrick Brown, Jr., Esquire (jpb@gdllaw.com)
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036

All notices to ANC 6E required to be given under this Agreement shall be addressed to:

Advisory Neighborhood Commission 6E
P.O. Box 26182
Le Droit Park Station
Washington, D.C. 20001

32. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one instrument.
33. **Compliance with D.C. Law.** Developer agrees that all construction contracts will require that all construction personnel involved in the Project strictly follow the applicable D.C. laws for construction noise and construction hours, except as modified or limited by this Agreement.
34. **Dispute Resolution and Enforcement.** This Agreement is being adopted by Developer for the benefit of the community and is an agreement between Developer and ANC 6E. The Parties intend that if concerns or disputes arise, these concerns and disputes should be addressed collegially to the maximum extent possible, and the parties anticipate that such collegial efforts will be successful. A signatory may, however, if it deems the matter particularly serious and if collegial efforts have not resulted in appropriate relief, pursue the legal and equitable remedies normally available to a party to an agreement, including any remedies in a court of law. The

agreement of Developer to the foregoing is specifically subject to and conditioned on ANC 6E compliance with Paragraphs 13, 14 and 15 herein.

The Parties have signed this Agreement effective as of March 1, 2016.

Advisory Neighborhood Commission 6E

MR 618 T Contract LLC

By: 

Alexander M. Padro

Title: Vice Chair

By: 

Name: Michael Darby

Title: Authorized Signatory

APPENDIX A: SAMPLE TIE-BACK & OVERSWING AGREEMENT

TIE-BACK & OVERSWING AGREEMENT

Jefferson at Market Place

THIS TIE-BACK & OVERSWING AGREEMENT (this "Agreement") is entered into as of the 25th day of September, 2012 by and between **KELSEY GARDENS PROPERTY COMPANY, LLC**, a District of Columbia limited liability company ("Developer") and _____ (the "Adjoining Owner").

RECITALS

A. Developer is the owner of the parcel of land known as Lot 68 in Square 421 located in the District of Columbia, bounded by 7th Street, N.W. on the east, P Street, N.W. on the south, Q Street, N.W. on the north, and a 10' public alley on the west ("Developer's Property").

B. Adjoining Owner is the owner of the adjoining residential property (the "Adjoining Improvements") located at 1511 8th Street, N.W. in the District of Columbia ("Adjoining Owner's Land").

C. Developer plans to construct an apartment building with certain retail space and underground parking (the "Project") on the Developer's Property.

D. The parties wish to enter into this Agreement to grant the Developer certain rights to access and protect the Adjoining Owner's Land from damage that might otherwise result from the excavation of the Developer's Property, and to permit Developer to operate construction cranes on Developer's Property that may overswing Adjoining Owner's Land and the Adjoining Improvements (collectively, the "Adjoining Owner's Property") during the course of construction of the Project.

NOW THEREFORE, in consideration of the above recitals incorporated into and made a substantive part of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subject to the terms and conditions hereof, during the term of this Agreement, Adjoining Owner grants permission to Developer, its agents, employees and contractors, at the sole cost, expense and liability of Developer and without any cost, expense or liability to Adjoining Owner:

(i) to enter upon Adjoining Owner's Land (but not inside the Adjoining Improvements, except to photograph the interior conditions of the Adjoining Improvements after making prior arrangements for such access with the Adjoining Owner), to use all commercially reasonable measures to preserve and prevent any damage to Adjoining Owner's Property arising out of the excavation of the Developer's Property and the construction and development of the Project thereon including without limitation the Tie-Back Work and the Overswing;

(ii) an easement to install tie-backs below grade to support the soldier piles and lagging for the Improvements (the "Tie-Backs") within a portion of Adjoining Owner's Land which may lie within the "Subject Area" identified on the plat attached hereto as Exhibit A (the "Tie-Back Work"); all of which activities and work described above shall be undertaken at the sole cost and expense of the Developer, and without liability, cost or expense being incurred by the Adjoining Owner, and

(iii) a temporary, non-exclusive license to pass the booms or tower cranes over the Adjoining Owner's Property without passing materials or equipment over the Adjoining Owner's Property.

The Tie-Back Work and Crane Overswing, as defined below, and any and all other work performed by or for the Developer as herein described is herein collectively called the "Work" and shall be subject to the terms of this Agreement, and Developer shall comply with all applicable laws of the District of Columbia pertaining to the Work.

2. Subject to the terms and conditions hereof, the Adjoining Owner hereby consents to and grants permission to Developer for the overswing of one or more mobile construction cranes (collectively, the "Cranes") over the air space no less than fifty (50) feet above the highest improvement of the Adjoining Owner's Property from time to time during the course of construction of the Project (the "Crane Overswing"). The right of Crane Overswing is granted solely to accommodate the horizontal rotation of such Cranes, it being understood and agreed that the Developer and its contractors, agents and employees will not hoist or permit or cause to be overswung above the Adjoining Owner's Property any materials, supplies, equipment or other loads of any kind, whether for use in the construction of the Project or otherwise.

3. All such Cranes shall be operated with safe and generally accepted construction practices in the District of Columbia and in full compliance with all applicable laws and in compliance with all licenses and permits required for the parking, use and operation of the Cranes.

4. Developer, at its sole cost and expense, will install and maintain such construction fences, gates and warning signs relating to Developer's excavation and sheeting and shoring ("Fencing"), as required by all applicable laws during the operation and/or parking of the Cranes. Promptly upon completion of the Project, Developer, at its sole cost and expense, shall remove the Fencing.

5. Developer, at its sole cost and expense, will install vibration and crack monitors at intervals deemed appropriate within industry standards by the Project's excavation and tie-back engineer along the east side of the ten foot public alley between P and Q Streets, N.W. Developer's engineer shall check such monitor's no less than on a monthly basis, until completion of construction of the foundation to grade.

6. Developer, at its sole cost and expense, will:

- (a) establish a 24-hour telephone number for Adjoining Owner to report emergency situations;
- (b) provide the telephone number of Developer's construction supervisor for Adjoining Owner to report non-emergency situations, express concerns and to make inquiries;
- (c) provide one (1) car wash coupon each week to Adjoining Owner for a free car wash at a Developer designated car wash in the reasonable proximity of the Project. Adjoining Owner shall only be entitled to receive the weekly coupon if the Adjoining Owner picks up the coupon for the then current week (on a Monday through Friday basis) at the onsite construction office trailer. The car wash coupons will become available upon the start of construction of the Project and

will end upon the later of completion of site work activities (foundation to grade) or six (6) months following the start of construction; provided that the car wash coupon program shall end earlier upon Developer's expenditure of \$278 for the Adjoining Owner's coupons;

- (d) engage the services of a pest control company to abatement rat infestation at the Project and the Adjoining Owner's Property for a period not exceeding the later of three months following the completion of site work activities (foundation to grade);
- (e) provide prior notification to Adjoining Owner of temporary blockage of the ten foot public alley for construction activities by a combination of electronic communications, robo calls and posting of notices at the public alley;
- (f) encourage subcontractor workers to utilize mass transit, car pool and locate public parking facilities; and
- (g) locate the construction office trailers along P and Q Streets, N.W.

7. Provided that Developer receives fully executed Tie-Back and Overswing Agreements from no less than 25 of 28 adjoining property owners of the properties ("Required Threshold of Agreements") with addresses from 1505 through 1543 8th Street, N.W. and 706 through 714 Q Street, N.W. by 7 p.m. Eastern Time on Monday, August 13, 2012, Developer shall pay to Adjoining Owner a cooperation fee ("Cooperation Fee") in the sum of Twenty-Five Hundred and No/100 Dollars (\$2,500), payable within fifteen (15) days following August 13, 2012. If Developer does not receive the Required Threshold of Agreements, Developer shall not be obligated to pay the Cooperation Fee.

8. Developer shall and does hereby indemnify, defend and hold Adjoining Owner and its successors, assigns employees, agents, tenants (and such tenants' respective lenders, trustees, principals, beneficiaries, employees, agents, representatives and business invitees and patrons), contractors, guests, and mortgagees harmless from and against any and all loss, damage, cost or expense (including, but not limited to, reasonable attorney's fees and court costs), litigation, judgments, fines and other claims for bodily injury, death or damage to the Adjoining Owner's Property or any other claims arising from or caused by performance of the Work.

9. The Developer shall promptly, upon written notice from Adjoining Owner and subject to the terms of this Agreement, and provided that the Adjoining Owner permitted the Developer to perform a pre-construction review and evaluation of the Adjoining Owner's Property, repair, at its sole cost and expense, any damage to the Adjoining Owner's Property caused by the Work performed by Developer, its successors, assigns, agents, employees, contractors or subcontractors (collectively, the "Developer Parties") and in such case, the Developer shall restore, within a reasonable period of time subject to obtaining any applicable permits and materials, and subject to delays caused by severe weather conditions, the Adjoining Owner's Property to substantially the same condition and appearance as existed immediately prior to the commencement of any Work, utilizing no less than the prevailing industry methods and standards to perform the repairs and restoration work. The Developer has engaged ECS Mid-Atlantic, LLC, at no cost to the Adjoining Property Owner, to perform the pre-construction

review. The pre-construction review shall include a video survey and an evaluation report which will be provided to Developer and the Adjoining Property Owner. In the event Developer and Adjoining Owner do not agree on the corrective work required to restore the Adjoining Owner's Property and/or its contents to as good condition as they were before the damage, Developer will hire an independent licensed engineering firm that is approved by Adjoining Owner, to review and approve the Developer's proposed corrective work before such work is completed. Developer shall cause the applicable contractor or subcontractor to warrant the repairs from defects in workmanship and installation for a period of one year after completion of the repair.

10. The rights of Developer under or pursuant to this Agreement shall expire and be of no force or effect upon the issuance of the permanent certificate of occupancy for the Project, but in no event later than June 30, 2016 (the "Expiration Date"). Developer shall at no time have any obligation to remove the Tie-Backs within the Adjoining Owner's Land. Following Developer's receipt of the permanent certificate of occupancy for the Project, Adjoining Owner shall have the right at its own cost to cut the Tie-Backs. Developer shall cause the juncture, if any, between the Adjoining Improvements and the improvements constructed by Developer on Developer's Property to be sealed and parged against moisture, rain and the elements. Notwithstanding the termination of this Agreement, all of Developer's obligations and all rights of Adjoining Owner hereunder shall survive the termination of this Agreement for a period of three (3) years following the issuance of the permanent certificate of occupancy for the Project. The cure periods for Developer's defaults hereunder shall be (i) within ten (10) business days after its receipt of written notice of a monetary default, or (ii) within twenty (20) days (as extended up to an additional thirty (30) days if reasonably necessary and Developer acts diligently) after Developer's receipt of written notice of a nonmonetary default hereunder. Developer shall provide Adjoining Owner quarterly reports on the progress of the Project until Developer's receipt of the permanent certificate of occupancy for the Project.

11. The contractor shall have no liability and shall not be bound to Adjoining Owner or Developer under this Agreement for the acts or omissions of the Adjoining Owner, Developer, or any other third party for whom the contractor is not responsible pursuant to the terms of the construction agreement. To the extent applicable, Developer shall enforce for the benefit of Adjoining Owner all warranties that Developer receives from its contractors or subcontractors with respect to the Work.

12. Developer covenants to require its contractor(s) performing the Work to have a policy of general liability insurance provided by an insurance company qualified to do business in the District of Columbia with commercially reasonable financial ratings for projects of this nature and with a minimum combined single limit (including excess liability coverage) of at least Ten Million Dollars (\$10,000,000) per occurrence and at least Twenty Five Million Dollars (\$25,000,000) annual aggregate. Adjoining Owner shall be named as an additional insured, and shall be provided with a copy of the Certificate of Liability Insurance. Developer shall provide advance written notice to Adjoining Owner of any change to such liability insurance coverage.

13. Adjoining Owner represents and warrants to Developer that (i) Adjoining Owner is the owner in fee simple of Adjoining Owner's Land, (ii) it has the authority to enter into this Agreement, and (iii) the person executing this Agreement on behalf of Adjoining Owner is duly authorized to do so. Developer represents and warrants to Adjoining Owner that (i) Developer is the owner in fee simple of the Developer's Property, (ii) it has the authority to enter into this Agreement, and (iii) the person executing this Agreement on behalf of Developer is duly authorized to do so. Developer represents and warrants that it will obtain all licenses, permits and

approvals necessary for the activities it intends to conduct on the Adjoining Owner's Property prior to conducting such activities and that it will comply with all laws, rules, and regulations applicable thereto.

14. Any notices required or otherwise given to the parties hereto under or pursuant to this Agreement shall be provided by hand delivery, commercial same day or overnight courier or certified mail, return receipt requested, to the parties at their respective addresses as follows or to such other address as any party shall from time to time have designated by written notice given to the other parties as herein provided:

If to Developer: Kelsey Gardens Property Company, LLC
c/o Jefferson Apartment Group
1420 Springhill Road, Suite 420
McLean, Virginia 22102
Attention: Greg Lamb

With a copy to: Saul Ewing LLP
1919 Pennsylvania Avenue, N.W.
Washington, DC 20036
Attention: Jeffrey H. Gelman, Esq.

If to Adjoining Owner: _____
1511 8th Street, N.W.
Washington, D.C. 20001

Notices given in conformity with this Section 14 shall be effective upon delivery or attempted delivery during normal business hours.

15. Developer has no right to and will not subject the Adjoining Owner's Property to any mechanic's or materialmen's liens ("Liens"). Developer will indemnify, defend and save Adjoining Owner harmless from any Liens arising from the Work and will remove or bond off of record such Liens within fifteen (15) days after receipt of notice thereof.

16. Each party shall have the right to assign this Agreement and all rights granted to it hereunder to any future owner(s) of title to the Developer's Property or the Adjoining Owner's Property.

17. (a) This Agreement shall be governed by the laws of the District of Columbia without regard to conflicts of law provisions.

(b) This Agreement may not be modified or amended except by a writing executed by the parties hereto.

(c) This Agreement shall be binding upon the parties hereto, their successors and assigns.

(d) Nothing herein shall be construed to make the parties hereto partners or parties to joint venture.

(e) Neither party hereto shall record this Agreement in the land records of the District of Columbia.

(f) Nothing herein shall be construed as Adjoining Owner's approval of the Project.

(g) If any term or condition of this Agreement shall, to any extent, be invalid or unenforceable, the balance of this Agreement shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

(h) If either party brings suit or any other action to enforce this Agreement, the prevailing party in such suit or action shall be entitled to reasonable attorney's fees and costs, and costs of enforcement.

(i) This Agreement contains the entire agreement of the parties hereto relating to the matters set forth herein.

(j) This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Transmission of this Agreement by facsimile or electronic mail shall be deemed transmission of the original Agreement for all purposes.

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[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

DEVELOPER:

KELSEY GARDENS PROPERTY COMPANY, LLC,
a District of Columbia limited liability company

By: **SW JAG KELSEY GARDENS, L.L.C.**
a Delaware limited liability company
Sole Member

By: **JAG-STAR KG HOLDINGS, L.L.C.**
a Delaware limited liability company
its Manager

By: _____

Name: _____

Title: Authorized Representative

ADJOINING OWNER:

Name: _____

Name: _____

EXHIBIT A

Plat Showing Subject Area for Tie-Back Work

