

**CERTIFIED BUSINESS ENTERPRISE  
UTILIZATION AND PARTICIPATION AGREEMENT**

**THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT** (this “Agreement”) is made by and between the DISTRICT OF COLUMBIA (the “District”), a municipal corporation acting by and through the DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT (“DSLBD”) and DC Stadium LLC, a Delaware limited liability company, and a wholly owned subsidiary of DC Soccer LLC, or its designees, successors or assigns (the “Developer”).

**RECITALS**

A. Pursuant to an Amended and Restated Development Agreement dated as of July 2, 2015 (the “Development Agreement”) between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development (“DMPED”); D.C. Official Code § 10-801 (“Statute”) and an Amended and Restated Ground Lease dated as of July 2, 2015 (the “Ground Lease”) between the Developer and the District, by and through the Department of General Services, (Development Agreement, Statute and Ground Lease together “Development Documents”), Developer intends to provide for the development and construction of a state of the art LEED certified stadium (“Stadium”) and adjacent land improvements anticipated to include but not limited to office, retail, hotel and/or residential uses to be determined (“Adjacent Improvements”) to be located at squares 603, 607, 661 and 665 in the vicinity bounded by 2nd Street, SW, R Street, SW, Potomac Avenue, SW, Half Street, SW and T Street, SW, in Washington, DC (the “Project”).

B. Pursuant to the Development Documents, the Developer covenants that it has executed and will comply in all respects with this Agreement.

C. Capitalized terms not defined herein shall have the meaning assigned to them in the Development Documents.

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

**ARTICLE I  
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

**Section 1.1 CBE Utilization.**

**(a) Preconstruction and Construction Phase:** Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Small Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.) (“Old Act”) and/or the Small and Certified Business Enterprise Development and Assistance Act of 2014, as amended, (D.C. Law 20-108; D.C. Official Code § 2-218.01 et seq.) (the “New

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Act”) (each a “Small Business Enterprise”), (Old Act and New Act collectively referred to herein as “Act”), in connection with the predevelopment/ preconstruction and development/ construction phases of the Project, including but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from Small Business Enterprises in an amount equivalent to no less than thirty five percent (35%) of the adjusted development budget (“Adjusted Development Budget” or “Adjusted Budget”) detailed in Attachment 1 (the “CBE Minimum Expenditure”). If there are insufficient qualified Small Business Enterprises to fulfill the 35% requirement, the requirement may be satisfied by subcontracting 35% to qualified Certified Business Enterprises certified pursuant to the Act. The Developer shall use Best Efforts (defined herein) to ensure at least twenty percent (20%) of the CBE Minimum Expenditure is awarded to businesses also certified pursuant to the Act as Disadvantage Business Enterprises (DBEs) (“20% DBE Expenditure”). Small Business Enterprises and DBEs collectively referred to herein as (“CBE”). The Adjusted Development Budget is \$110,244,436. The CBE Minimum Expenditure is therefore \$38,585,553; and, the 20% DBE Expenditure is therefore \$7,717,111.

(i) In addition, the Developer shall use Best Efforts (as defined herein in Article VI, Section 6.1 (iv)) to contract with Certified Business Enterprises during the preconstruction and construction phase to exceed the CBE Minimum Expenditure by fifteen percent (15%) (“Extra 15% CBE Contracting”).

**(b) Operations Phase:** Beginning from the Rent Commencement Date until the Stadium ceases to be operated (“Operations Phase”), Developer shall use Best Efforts to expend funds contracting and procuring goods and services from Certified Business Enterprises, certified pursuant to the Act, in an amount equivalent to no less than thirty-five percent (35%) of the total contracts in connection with the operation of the Stadium for each fiscal year (“Operations Phase CBE Expenditures”). All contracts for goods and services to operate the Stadium shall be included in each operations fiscal year budget excluding (1) direct costs paid by the Developer such as utilities, supplies, etc. approved by DSLBD, (2) any exclusion allowed in the Preconstruction and Construction Phases that is applicable for similar reasons in the Operations Phase, and (3) any other exclusions approved by DLSBD (“Operations Budget”). The Rent Commencement Date as defined in the Ground Lease means the date upon which Developer receives the Certificate of Completion. Developer shall submit the Operations Budget (Attachment 1- Operations Budget) for each fiscal budget year to DSLBD for approval no later than thirty (30) days after the Rent Commencement Date, and thereafter no later than thirty (30) days after the start of each new fiscal budget year. Each Operations Budget approved by DSLBD shall become a part of and incorporated into this Agreement; and such approval shall be provided to the Developer and ODCA.

**Section 1.2 Time Period.**

**(a) Preconstruction and Construction Phase:** Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District (“Expenditure Period”). If within three (3) years of the execution of this Agreement the Developer has not achieved the CBE Minimum Expenditure and has not obtained

a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

**(b) Operations Phase:** Developer shall achieve its Operations Phase CBE Expenditures by the close of each operations budget fiscal year starting from the Rent Commencement Date until thirty (30) days after the Stadium permanently ceases to operate (“Operations Expenditure Period”).

### **Section 1.3 Adjustments**

**(a) Adjustments to the Total Development Budget or CBE Minimum Expenditure.** If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within thirty (30) calendar days Developer shall submit a modified Attachment 1 for DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure (“Adjustment”). The CBE Minimum Expenditure and Contingent Contributions shall be automatically increased in the case of an increase, or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of and incorporated into this Agreement; and any such approval shall be provided to the Developer and ODCA.

**(b) Adjustments to the Operations Budget.** If the Operations Budget for any given fiscal year during the Operations Phase increases or decreases by an amount greater than 5%, within thirty (30) calendar days Developer shall submit a modified Attachment 1 – Operations Budget to DSLBD to review (“Operations Adjustment”). The Operations Phase CBE Expenditures shall be automatically increased in the case of an increase, or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1 – Operations Budget, approved by DSLBD, shall become a part of and incorporated into this Agreement; and any such approval shall be provided to the Developer and ODCA.

## **ARTICLE II CBE OUTREACH**

**Section 2.1 Outreach Efforts.** Developer shall utilize the resources of DSLBD, including DSLBD’s website (<http://dslbd.dc.gov>). In particular, Developer shall submit all contracting opportunities for this Project to DSLBD for publication. Developer may identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD’s Certification unit to apply for certification. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD’s website.

**ARTICLE III  
QUARTERLY REPORTING**

**Section 3.1 Quarterly Report.**

(a) Throughout the Expenditure Period and Operations Expenditure Period regardless of whether the CBE Minimum Expenditure or each Operations Phase CBE Expenditures are achieved before the end of each respective period, Developer will submit quarterly contracting and subcontracting expenditure reports (“Quarterly Report”) for the Project.

(b) The Quarterly Report shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each quarter. The Quarterly Report shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) If the Developer fails to submit a Quarterly Report by the date required in sub-section (b) of this section, the Developer shall pay a penalty to DSLBD.

(i) The penalty the Developer shall pay to DSLBD for each Quarterly Report that the Developer fails to submit by the date required in sub-section (b) of this section shall be \$1000 for the first offense, \$2000 for the second offense, and \$3000 for each offense thereafter.

(d) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Report unless and until the company is certified by DSLBD as a CBE.**

(i) In order to obtain credit towards the CBE Minimum Expenditure and the Operations Phase CBE Expenditures requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor. CREDIT WILL ONLY BE GIVEN FOR THE PORTION OF THE CONTRACT/SUBCONTRACT PERFORMED BY A CBE USING THEIR OWN ORGANIZATION AND RESOURCES.**

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure and Operations Phase CBE Expenditures if the Developer’s utilized contractor/ subcontractor:

- (1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;
- (2) has a pending application before DSLBD seeking CBE certification;
- (3) has an expired CBE certification;
- (4) has a CBE certification application that DSLBD denied; or

(5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification must be valid to receive credit towards the CBE Minimum Expenditure and Operations Phase CBE Expenditures. If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer must check the DSLBD website:  
<http://lsdbe.dslbd.dc.gov/public/certification/search.aspx>

(e) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(f) Concurrently with the submission of the Quarterly Report, Developer shall also submit vendor verification forms (each, a “Vendor Verification Form”) substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report. However, DSLBD reserves the right to amend this form. If a completed Vendor Verification Form is not submitted for each contract/subcontract performed by a CBE, or portion thereof, the Developer will **not** receive credit towards the CBE Minimum Expenditure and Operations Phase CBE Expenditures for that contract/subcontract.

(g) Concurrently with the submission of the Quarterly Report, Developer shall also submit a copy of each fully executed contract/subcontract with each CBE contractor/subcontractor identified in the Quarterly Report. **If a fully executed contract/subcontract is not submitted, the Developer will not receive credit towards the CBE Minimum Expenditure and Operations Phase CBE Expenditures for that contract/subcontract.**

(h) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Report shall contain the caption “CBE MINIMUM EXPENDITURE ACHIEVED.” Additionally, the final Quarterly Report shall contain the caption “FINAL QUARTERLY REPORT” and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

**Section 3.2 Mandatory Meeting with DSLBD and ODCA.** Within ten (10) business days of executing this Agreement, the Developer shall meet with DSLBD and ODCA to discuss the reporting requirements during the Expenditure Period and Operations Expenditure Period. In the event that DSLBD and/or ODCA is unavailable to meet within 10 business days, Developer shall schedule the meeting on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer, DSLBD and ODCA.

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DC Stadium LLC  
c/o DC United  
2400 East Capitol Street, SE  
Washington DC 20003  
Attention: Troy D. Scott  
202-587-5483  
[tscott@dcunited.com](mailto:tscott@dcunited.com)

With a copy to:

Arent Fox LLP  
1717 K Street, NW  
Washington DC 20036  
Attention: Richard A. Newman, Esq.  
202-857-6395 fax  
202-857-6170 phone  
[Richard.newman@arentfox.com](mailto:Richard.newman@arentfox.com)

Ronnie Edwards  
Deputy Director  
Department of Small and Local Business Development  
441 4th street NW, Suite 850N  
Washington, DC 20001  
202- 727- 3900  
[Ronnie.Edwards2@dc.gov](mailto:Ronnie.Edwards2@dc.gov)

Sophie Kamal  
Financial Auditor  
Office of the District of Columbia Auditor  
717 14th ST NW, Suite 900  
Washington, DC 20005  
202- 727- 8998  
[Sophie.Kamal@dc.gov](mailto:Sophie.Kamal@dc.gov)

**ARTICLE IV  
PROJECT MANAGERS AND GENERAL CONTRACTORS/CONSTRUCTION  
MANAGERS**

**Section 4.1 Adherence to CBE Minimum Expenditure and Operations Phase CBE Expenditures.** For each component of the Project and each Operations Budget, Developer shall require in its contractual agreements with the Project Manager (“PM”), or with the general contractor and/or construction manager for the Project (the “General Contractor” or “GC”), as applicable, that the PM or GC comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure and Operations Phase CBE Expenditures. In the event that the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the PM or GC to assure that the PM or GC will assist the Developer in achieving the applicable CBE Minimum Expenditure and Operations Phase CBE

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Expenditures. Developer further agrees to inform the PM or GC and subcontractors of the other obligations and requirements applicable to the Developer under this Agreement. Developer shall inform the PM or GC that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the PM or GC respectively. Specifically, Developer will require in its contractual agreement with its PM or GC, or if the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, work with its PM or GC, to achieve the following actions in contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

- (i) When soliciting bids for products or services for this Project, the PM or GC shall allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.
- (ii) The PM or GC will make full use of DSLBD's website, found at <http://dslbd.dc.gov>, for subcontracting opportunities and for compliance monitoring.
- (iii) The PM or GC will provide a CBE bidder, who is not the low bidder, an opportunity to provide its final best offer before contract award, provided the CBE bid price is among the top 3 bidders.
- (iv) The PM or GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the PM or GC may accept a job specific certificate of insurance.
- (v) The PM or GC will include in all contracts and subcontracts with CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the subcontract/contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association or mediation/ or arbitration conducted by or in accordance with a Union Agreement.
- (vi) The PM or GC and subcontractors shall strictly adhere to their contractual obligations to pay all CBE contractors and subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the PM or GC, the PM or GC is to immediately notify the CBE contractor/subcontractor and advise as to the date on which payment can be expected.
- (vii) The PM or GC commits to pay all CBEs, within fifteen (15) days following the PM's or GC's receipt of a payment which includes funds for such contractors/subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the CBE contractors/subcontractors of the Developer's payment to the PM or GC.
- (viii) The PM or GC commits to verify a contractor/ subcontractor's CBE certification

status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a CBE contractor/ subcontractor, in accordance with Article III of this Agreement.

**ARTICLE V**  
**EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION**

**Section 5.1 CBE Equity Participation and Development Participation Requirements:**

- (i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, (“CBEs”) shall receive no less than twenty percent (20%) in sponsor Developer equity participation (“Equity Participation”) and no less than twenty percent (20%) in development participation (“Development Participation”) in the Project, in accordance with Section 2349a of the Old Act<sup>1</sup>, D.C. Official Code § 2-218.49a;
- (ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant’s equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;
- (iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;
- (iv) **CBE Equity Participant’s Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;
- (v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and
- (vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

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<sup>1</sup> Pursuant to Section 4(b) of the New Act, this Project is subject to the Equity and Development requirements of the Old Act, because the Project was pending prior to the effective date of the New Act.



**Section 5.2 Sweat Equity Contribution.** No more than 25% of the total 20% equity participation requirement (“equal to 5%”) set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain (“sweat equity contribution”). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

- (i) A detailed description of the scope of work that the CBE will perform;
- (ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;
- (iii) The date or time period when the CBE will receive compensation;
- (iv) The return, if any, the CBE will receive on its sweat equity contribution; and
- (v) An explanation of when the CBE will receive its return as compared to other team members or investors.

**Section 5.3 CBE Inclusion, Recognition, Access and Involvement.** Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan, managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing, performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

**Section 5.4 No Changes in CBE Equity Participation and Development Participation.**

- (i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no change in the Equity Participation and Development Participation and no dilution of the participants’ Equity Participation and Development Participation without the express written consent of the Director; and

- (ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

**Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.**

- (i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of returns for the CBE Equity Participant(s) without the Director's express written consent;
- (ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;
- (iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate; and
- (iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled.

**Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.**

- (i) If there is a transfer of title to any District-owned land that will become part of the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act; and
- (ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

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- (a) The CBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and
- (b) The CBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor Developer equity in the Project throughout its development.

**Section 5.7 CBE Equity Participation and Development Participation Reports.** Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be determined, and amended, by DSLBD. The reports shall be submitted in accordance with Section 3.1 of this Agreement and shall include information regarding:

- (i) Changes in ownership interest of the owners/partners;
- (ii) Additions or deletions of an owner/partner;
- (iii) Changes in the legal status of an existing owner/partner;
- (iv) Changes in the percentage of revenue distribution to an owner/partner;
- (v) A description of team member activities; and
- (vi) The amount of development fees paid to each team member, participant, partner, or owner.

**Section 5.8 Article V of this Agreement Controls.**

- (i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s).
- (ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

**Section 5.9 Equity Participation Unmet.** If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

## ARTICLE VI CONTINGENT CONTRIBUTIONS

**Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure.** At the end of the Expenditure Period, as defined herein, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer’s actual CBE expenditures. If Developer’s actual CBE expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the “Shortfall”). If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.2 herein, Developer shall make the following payments, each a (“Contingent Contribution”), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the “Contribution Fund”). As an example for the CBE Minimum Expenditure, the Contribution Fund is therefore **\$9,646,388**.

- (i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of **\$9,646,388**.
- (ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20% of the CBE Minimum Expenditure, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, **\$1,929,278**.
- (iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer’s reports and other verifiable evidence) and demonstrated Best Efforts (defined herein) were used to attempt to achieve the CBE Minimum Expenditure, the Developer shall *not* be required to make a Contingent Contribution.
- (iv) The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors’ compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking

the following actions, among other things<sup>2</sup> which together shall constitute best efforts (“Best Efforts”):

- a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as “Target Audience” based on D.C. certification criteria;
  - b. During the initial construction of the Project and Operations Phase for each Operations Budget, place advertisements in media outlets that address the Target Audience on a regular basis (*i.e.*, each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;
  - c. Email new procurement opportunity alerts to targeted CBEs according to trade category;
  - d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;
  - e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
  - f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request; and
  - g. Commit to promoting opportunities for partnerships between non-CBE and CBE firms to further grow CBEs and increase contract participation.
- (v) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* demonstrated Best Efforts and has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer’s reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5% of the CBE Minimum Expenditure, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, \$482,319.
- (vi) DSLBD shall not impose a Contingent Contribution for failure to meet the 20% DBE Expenditures, Extra 15% CBE Contracting, and Operations Phase CBE Expenditures for each Operations Budget.

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<sup>2</sup> See Attachment 6 for a list of additional suggested outreach activities.

- (vii) In the event a CBE hired as part of the Project goes out of business, loses its certification during the Project, or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry (“Request”). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% (“Approved Deduction”), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure (including the 20% DBE Expenditures), Extra 15% CBE Contracting, and Operations Phase CBE Expenditures for each Operations Budget as applicable.

**Section 6.2 Failure to Meet Equity and Development Participation Requirements.** Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement.

**Section 6.3 Other Remedies.** Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

**Section 6.4 Waiver of Contingent Contributions.** Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.1 Primary Contact.** The Director’s designee shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement.

**Section 7.2 Notices.** Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, mailed or emailed (with email confirmation), addressed as follows:

*CBE AGREEMENT – DC Soccer Stadium*

To DSLBD: Department of Small and Local Business Development  
441 4<sup>th</sup> Street, N.W., Suite 850 North  
Washington, DC 20001  
Attention: Director  
Tel: (202) 727-3900  
Fax: (202) 724-3786

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

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

To ODCA: Office of the District of Columbia Auditor  
717 14th ST NW, Suite 900  
Washington, DC 20005  
Attention: District of Columbia Auditor  
202-727-3600

To Developer: DC Stadium LLC  
c/o DC United  
2400 East Capitol Street, SE  
Washington DC 20003  
Attention: Troy D. Scott  
202-587-5483  
[tscott@dcunited.com](mailto:tscott@dcunited.com)

*CBE AGREEMENT – DC Soccer Stadium*

With a copy to: Arent Fox LLP  
1717 K Street, NW  
Washington DC 20036  
Attention: Richard A. Newman, Esq.  
202-857-6395 fax  
202-857-6170 phone  
[Richard.newman@arentfox.com](mailto:Richard.newman@arentfox.com)

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

**Section 7.3 Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

**Section 7.4 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

**Section 7.5 Amendment; Waiver.** This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

**Section 7.6 Governing Law.** This Agreement shall be governed by the laws of the District of Columbia.

**Section 7.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 7.8 Entire Agreement.** All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.



**Section 7.9 Captions, Gender, Number and Language of Inclusion.** The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word “including” shall mean “including but not limited to”.

**Section 7.10 Attachments.** The following exhibits shall be deemed incorporated into this Agreement in their entirety (THERE ARE NO ATTACHMENTS 2 AND 3 FOR THIS PROJECT):

<i>Attachment 1:</i>	<i>CBE Minimum Expenditure</i>
<i>Attachment 1 - Operations Budget</i>	<i>Operations Phase CBE Expenditures</i>
<i>Attachment 4:</i>	<i>Quarterly Report</i>
<i>Attachment 5:</i>	<i>Vendor Verification Forms</i>
<i>Attachment 6:</i>	<i>Suggested Outreach Activities</i>
<i>Equity Participation and Development Participation Quarterly Report</i>	
<i>Attachment</i>	

DSLBD reserves the right to amend the templates for all Attachments.

**Section 7.11 Collected Fines.** Any and all fines imposed and collected by DSLBD pursuant to this Agreement will be deposited into the fund established by D.C. Official Code § 2-218.75.

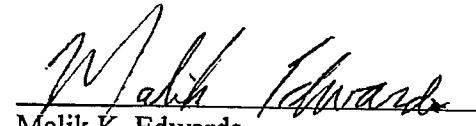
**Section 7.12 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

**Section 7.13 Recitals.** The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

Signatures to follow

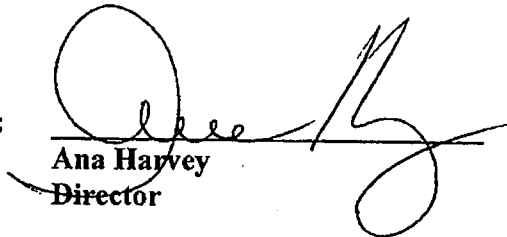
***CBE AGREEMENT – DC Soccer Stadium***

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By:   
Malik K. Edwards  
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 13<sup>th</sup> DAY OF May 2016

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

By:   
Ana Harvey  
Director

**DEVELOPER,**

**DC STADIUM LLC**

**By: DC Soccer, LLC, sole member**

**By: Black Eagle Investment Group, LLC its Controlling Member**

By: \_\_\_\_\_  
**Jason Levien**  
**Managing Member**

**CBE AGREEMENT – DC Soccer Stadium**

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: \_\_\_\_\_  
Malik K. Edwards  
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016

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

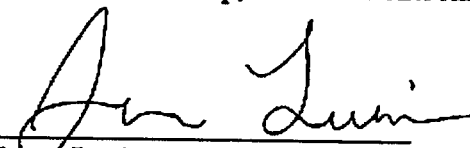
By: \_\_\_\_\_  
Ana Harvey  
Director

**DEVELOPER,**

**DC STADIUM LLC**

**By: DC Soccer, LLC, sole member**

**By: Black Eagle Investment Group, LLC its Controlling Member**

By:   
\_\_\_\_\_  
Jason Levien  
Managing Member

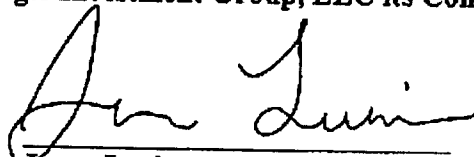
*CBE AGREEMENT – DC Soccer Stadium*

**ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):**

**By: DC Soccer, LLC**

**By: Black Eagle Investment Group, LLC its Controlling Member**

By:



**Jason Levien**

**Managing Member**

**100% of Development Participation in the Project**

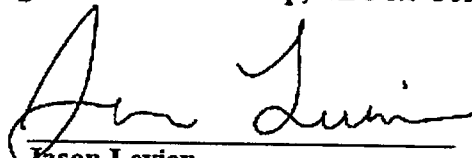
**CBE Number - LSX5784012019**

**ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):**

**By: DC Soccer, LLC**

**By: Black Eagle Investment Group, LLC its Controlling Member**

By:



**Jason Levien**

**Managing Member**

**100% of Equity Participation in the Project**

**CBE Number - LSX5784012019**