

RIGHT-OF-ENTRY

THIS RIGHT OF ENTRY AGREEMENT ("**ROE**") is made this ____ day of _____, 20__ (the "**Effective Date**") by and between **THE DISTRICT OF COLUMBIA**, acting by and through the District of Columbia Department of Housing and Community Development (the "**District**"), and _____, a District of Columbia _____ ("**Developer**").

RECITALS:

WHEREAS, District owns [that certain parcel][those certain parcels] of real property located [INSERT ADDRESS] in Washington, D.C., known for tax and assessment purposes as [Lot _____, Square ____], together with all existing improvements thereon (the "**Property**"), and

WHEREAS, Developer desires to enter the Property for the purpose of doing certain Feasibility Studies (as defined in Paragraph 1 below) in anticipation of negotiating a land disposition agreement with District.

NOW, THEREFORE, for the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, District and Developer agree as follows:

1. Right of Entry. Subject to the terms and conditions of this ROE, commencing on the Effective Date and continuing until the Expiration Date, District grants Developer and its employees, agents, contractors, and invitees (collectively "**Agents**") the right to enter the Property at any time during daylight hours Monday through Saturday (unless otherwise specified in the ROE) for performing surveying and soil, engineering, and environmental sampling, testing, and investigations, and such other tests, studies, and investigations as Developer deems necessary or desirable to evaluate the Property or as may be required by applicable laws, regulations or codes ("**Feasibility Studies**"). Developer or its Agents may store equipment on the Property during the term of this ROE; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property and District shall not be liable for any theft or damage to any equipment stored on the Property. No other use shall be made of the Property by Developer other than the performance of the aforementioned Feasibility Studies without District's prior written approval, which approval shall be within District's sole and absolute discretion. Prior to entering the Property, Developer shall (i) provide proof of insurance, as required in Paragraph 8(f) of this ROE and (ii) receive the prior consent of the District Representative. The District shall retain the right to further restrict the date and times of the entry. At the conclusion of the Feasibility Studies, Developer shall restore the Property to a condition deemed to be safe by the District Representative, in his sole and absolute discretion. The foregoing restoration obligation shall survive the expiration or earlier termination of this ROE.

2. Expiration; Termination. This ROE shall automatically expire (without further action by District), on the earlier of: (i) the effective date of the fully executed Property Disposition Agreement, or (ii) _____ days after the Effective Date (“**Expiration Date**”), unless extended in writing by District and Developer. Notwithstanding the foregoing, District may revoke this ROE at any time by notice delivered to Developer at the address set forth in Paragraph 3 of this ROE.

3. Notices.

A. Notices from Developer concerning entries upon the Property by Developer and its Agents, and coordination of scheduling, as provided for in Paragraph 1, shall be given to or made to District at:

Department of Housing and Community Development
1800 Martin Luther King, Jr. Ave., SE
Washington, D.C. 20020
Telephone: (202) 442-7285
Facsimile: (202) 645-6727
Attention: Thomas Stanback, Manager

District hereby designates Mr. Stanley L. Fields, Sr. as the “**District Representative**” and covenants that such representative, or an alternate designated in writing to Developer, shall make reasonable efforts to be available to allow Developer entry onto the Property pursuant to and for the purposes outlined in Paragraph 1.

B. All other notices and communications under this ROE shall be in writing and shall be deemed duly given (a) upon delivery, if delivered by prepaid reputable delivery service (with signed receipt), or by postage paid, certified (return receipt requested) or overnight U.S. mail, or (b) upon receipt, if sent by facsimile transmission, with electronic verification, or (c) upon refusal, if delivery is attempted by a means provided in (a). Notices shall be sent:

If to District: District of Columbia Department Housing and Community Development
1800 Martin Luther King, Jr. Ave., SE
Washington, D.C. 20020
Attention: Thomas Stanback, Manager
Facsimile: (202) 645-6727

with a copy to: District of Columbia Department Housing and Community Development
Office of the General Counsel
1800 Martin Luther King, Jr. Ave., SE
Washington, D.C. 20020
Attention: General Counsel
Facsimile: (202) _____

If to Developer: _____

Attention: _____
Facsimile: _____

With a copy to: _____

Attention: _____
Facsimile: _____

Each Party shall be responsible for notifying the other as to any change in its address or facsimile number.

4. Reports. Developer shall promptly provide written notification to District of the results of the Feasibility Studies and any other investigation of the Property and shall provide District with copies of all sampling results and any written summaries, reports, or evaluations of such results. District makes no representations or warranties as to the presence or absence of Hazardous Materials (defined hereinafter) in or on the Property. This provision shall survive the expiration or earlier termination of this ROE.

5. Removal of Equipment. At the expiration or termination of this ROE, Developer shall remove all tools, equipment, and other personal property from the Property at its sole cost. This provision shall survive the expiration or earlier termination of this ROE.

6. Security. Developer shall provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA for employee and public safety with respect to the Feasibility Studies performed hereunder. Developer shall maintain the security of each of its work sites on the Property to the reasonable satisfaction of District during the entire period of entry under this ROE. In the conduct of work undertaken herein, Developer shall exercise all normal and reasonable safety precautions and shall maintain all work areas on the Property in a clean and presentable manner. Developer shall use commercially reasonable efforts to secure the Property at all times during the Feasibility Studies and upon termination or expiration of this ROE. Developer shall be solely responsible for insuring that only Developer and its contractors have access to the Property while it is conducting the Feasibility Studies.

7. Indemnification. With respect to all activities permitted under this ROE, Developer shall at all times conform with and abide by the reasonable orders and directions of District officials or their duly authorized representatives, indemnifying the same and District as follows:

a. Developer shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges,

and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Developer occurring in connection with, or in any way arising out of the use, occupancy, and performance of the work permitted by this ROE; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of District.

b. Developer shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, remedial costs, environmental claims, fees, or other expense related to, arising from, or attributable to, any Hazardous Materials introduced by Developer (including effluent discharged on the Property) or as a result of Developer's activities on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of District.

c. Developer expressly indemnifies and shall defend District against any claims by contractors or subcontractors who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the District. This ROE shall not be construed as granting Developer or any contractor of Developer the right to place any lien, mechanic's lien, or any charge on the Property.

d. If any action or proceeding as described in this Paragraph 7 is brought against District, its officials, officers, or employees, the Office of the Attorney General for the District of Columbia ("OAG") in accordance with D.C. Official Code § 1-301.111, shall take all legal action required to defend the District against such action and Developer shall promptly reimburse District for all liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages, disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred by District in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against District or any of them in connection with or arising from or out of this ROE; provided, however, the foregoing indemnity shall exclude any claims or liabilities cause by the gross negligence or willful conduct of the District. Attorneys' fees incurred by OAG shall be calculated based upon an equivalent amount that a private firm of comparable size to the OAG would have been charged for such representation based on the number of hours the OAG employees participated in such litigation or other action.

e. The obligations contained in this Paragraph 7 shall survive expiration or the earlier termination of this ROE.

8. Insurance. During the term of this ROE and any extensions, at any time when Developer enters upon the Property, Developer or its contractor(s) or subcontractor(s), shall provide the following types of insurance and comply with the following requirements:

a. Contractor's Commercial General Liability Insurance. A Comprehensive Commercial General Liability Insurance policy issued to and covering the liability for all work

and operations under or in connection with this ROE and all obligations assumed by Developer under this ROE. Coverage shall include Completed Operations and Contractual Liability Insurance and Explosion, Collapse, and Underground Coverage. The coverage under such an insurance policy or policies shall have not less than the following limits:

Bodily Injury and Property Damage Liability
Three Million Dollars (\$3,000,000) Combined Single Limit Each Occurrence

District shall be named as an additional insured under the coverage for Commercial General Liability with respect to all activities under this ROE.

b. Contractor’s Pollution Legal Liability Insurance. Contractor’s Pollution Legal Liability Insurance Policy covering Developer’s liability during activities on the Property, if any, for the process of removal, storage, transport, and disposal of demolition debris or hazardous waste and contaminated soil. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental. District shall be named as an additional insured.

c. Worker’s Compensation. A policy complying with the requirements of the applicable District of Columbia laws and, if applicable, to the U.S. Longshoremen Harbor Workers’ Act, Jones Act or Admiralty laws and the Federal Employers’ Liability Act. The policy shall have not less the following limits:

Worker’s Compensation:	Statutory
Employers’ Liability:	
Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

d. Insurance Companies. Insurance companies providing the aforesaid coverages shall be rated by A.M. Best or a comparable rating company and carry at least an “A” rating. All insurance shall be procured from insurance companies licensed and authorized to do business in the District of Columbia.

e. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated, or modified (except to increase the amount of coverage) without thirty (30) days’ prior written notice from Developer to District. If the required insurance policies should be canceled, terminated, or modified so that the insurance is not in full force and effect, then District shall have the right to terminate this ROE immediately, without prior notice or right to cure by Developer.

f. Evidence of Insurance. Evidence of the requisite insurance policies in the form of certificates of insurance shall be submitted to District prior to Developer's entry onto the Property and from time to time at District's request.

9. Liability. Without prejudice to any other rights District may have, Developer is responsible, in accordance with applicable laws, for the acts and omissions of its Agents that cause injuries to persons or damages to Property, including any claims arising from such injuries or damages, caused by or arising from the activities permitted under this ROE. District shall have no liability for the actions or negligence of Developer or its Agents. Neither the grant of this ROE, nor any provision thereof, shall impose upon District any new or additional duty or liability or enlarge any existing duty or liability of District.

10. Licenses/Permits. Developer is solely responsible for obtaining any necessary licenses and permits for the work permitted under this ROE, including transportation and disposal of materials. The spoil (soil and water), if any, produced by Developer shall be stored, and disposed of, in strict compliance with local and federal laws. Prior to the removal of any non-hazardous materials and debris from the Property, Developer shall provide District written notice of the location to which the materials and debris are to be disposed.

11. Utilities. Developer shall be solely responsible for coordinating with the utility companies and for any utility costs incurred in connection with any activity performed by Developer and its Agents on the Property. Developer shall be solely responsible for the proper containment and removal of all utility lines on or near the Property. Developer shall defend and hold harmless District against any claims by any utility company resulting from Developer's direct or indirect activities on the Property.

12. Hazardous Materials. Developer shall immediately notify District if it discovers Hazardous Materials or waste on the Property. Within ten (10) days of the disposal of any Hazardous Materials, Developer shall provide District written evidence and/or receipts confirming the proper disposal of all hazardous materials removed from the Property. For purposes of this ROE, "**Hazardous Materials**" means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other applicable law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment. "**Environmental Law**" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any

Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called “Super Fund” or “Super Lien” law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

13. Not a Contract for Services. This ROE is not intended, nor shall it be deemed or construed, as a contract for services or to bind District to convey the Property to Developer. Nothing contained in this ROE and no future action or inaction by District shall be deemed or construed to mean that District has contracted with Developer to perform any activity on the Property, including, but not limited to, the permitted use pursuant to the ROE. Developer expressly acknowledges that District is prohibited by law from entering into contracts for services without following the procedures set forth in the Procurement Practices Act, D.C. Official Code §§ 2-301.01 (2007 Repl.) et seq., and all financial obligations of District or any subsequent agreement entered into by the parties are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, and 1351; (ii) the D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 et seq., as the foregoing statutes may be amended from time to time; and (iv) § 446 of the District of Columbia Home Rule Act. Under no circumstance shall Developer be entitled to reimbursement for any activities permitted by this ROE on the Property.

14. Compliance With Applicable Laws. Developer shall comply with all applicable federal, state and District of Columbia laws, and existing regulations promulgated thereunder in its use and activities permitted pursuant to the ROE, including all such laws and regulations governing the testing and investigation of asbestos, lead and other Hazardous Materials.

15. No Waiver. Nothing in this ROE shall be deemed to waive any rights of any kind that District now has, or may hereinafter have, to assert any claim against Developer or any other person or entity, including, without limitation, claims with respect to any and all past events or entry on the Property and activities of Developer or of any person or entity.

16. No Right, Title, or Interest. Nothing contained in this ROE and no action or inaction by District shall be deemed or construed to mean that District has granted Developer any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the Property, including, but not limited to, the grant of a license or easement in the Property.

17. Applicable Law and Binding Nature. This ROE shall be construed under the laws of the District of Columbia without reference to conflicts of laws principles. This ROE shall be binding

upon the heirs, personal representatives, successors, grantees, and assigns of the respective parties hereto.

a. Developer and District, their respective successors and assigns, each waives trial by jury in any action, proceeding, claim, or counterclaim brought in connection with any matter arising out of or in any way connected with this ROE, the relationship of District and Developer hereunder, Developer's entry on the Property, and/or any claim of injury or damage.

b. Developer and District each waives any objection to the venue of any action filed in any court situated in the jurisdiction in which the Property is located, and waives any right, claim, or power, under the doctrine of *forum non conveniens* or otherwise, to transfer any such action to any other court.

18. Entire Agreement. This ROE constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be modified or amended in any manner except by an instrument in writing executed by the parties as an amendment to this ROE.

19. Counterparts. This ROE may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this ROE by facsimile shall be sufficient for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, District and Developer have executed this ROE as of the date and year first above written.

DISTRICT OF COLUMBIA:

Acting by and through the Department of Housing and Community Development

Approved for Legal Sufficiency:
Office of the Attorney General
For the District of Columbia

Assistant Attorney General for
the District of Columbia

Michael P. Kelly
Director

DEVELOPER:

[_____]

By: _____
Name:
Title: