

AMENDMENT TO EXCHANGE AGREEMENT

THIS AMENDMENT TO EXCHANGE AGREEMENT ("Amendment") is made as of October 7, 2014 between the District of Columbia, a municipal corporation acting by and through the Department of General Services ("**District**"), and SW Land Holder, LLC, a Delaware limited liability company ("**SWLH**").

RECITALS:

A. The District and SWLH are parties to that certain Exchange Agreement dated as of May 23, 2014, as amended by two letters dated as of May 23, 2014 and August 20, 2014, respectively (the "**Original Agreement**", and as amended hereby, the "**Agreement**"); and

B. The District and SWLH desire to modify certain terms of the Original Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the District and SWLH hereby agree as follows, intending to be legally bound:

1. **Definitions.** Each capitalized term in this Amendment shall have the meaning ascribed to it in the Original Agreement unless such term is otherwise defined herein.

2. **Davis-Bacon.** Section 2.5 of the Original Agreement is hereby deleted. The definition of "Reduction Amount" in the Original Agreement is hereby deleted. Exhibit O to the Original Agreement is amended as follows: (a) the phrase "Section 2.5 or" is deleted in the first paragraph; (b) the word "and" is inserted before "(D)" in Section 1; (c) immediately following "(D)" in Section 1, the following language is hereby deleted, "with respect to an arbitration commenced pursuant to Section 2.5, is a partner at a nationally recognized law firm with offices in Washington, D.C. and who has demonstrable experience and expertise in the applicability of the Davis-Bacon Act to real estate development projects, and (E) with respect to an arbitration commenced pursuant to Section 5.11,"; and (d) the following language is hereby deleted from Section 3, "With respect to an arbitration pursuant to Section 2.5, the decision of the arbitrator(s) shall be limited solely to a yes or no determination as to whether it is more likely than not that the Davis-Bacon Act would apply to the development of the District Property by SWLH. With respect to an arbitration pursuant to Section 5.11,".

3. **Repurchase.** Section 10.18 of the Original Agreement is hereby deleted and replaced with the following:

"10.18. Repurchase Transactions.

(a) SWLH acknowledges that the exchange provided in this Agreement is being entered into by the District in order to facilitate the construction of the Soccer Stadium.

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As such, if the ground lease the District enters into with DC Stadium LLC in connection with the development of the Soccer District and the construction of the Soccer Stadium is terminated for any reason prior to June 15, 2015, the District shall have the right to (i) require SWLH to repurchase the fee ownership of the SWLH Land by providing written notice to SWLH within thirty (30) days of the termination of such ground lease (the “**SWLH Repurchase Transaction**”) and/or (ii) require SWLH to sell the fee ownership of the District Land and all Improvements located thereon to the District by providing written notice to SWLH within thirty (30) days of the termination of such ground lease (the “**District Repurchase Transaction**”); provided, however, that while the District may require the SWLH Repurchase Transaction without also requiring the District Repurchase Transaction, the District may not require the District Repurchase Transaction without also requiring the SWLH Repurchase Transaction.

(b) In the event timely notice is received by SWLH that the District is requiring the SWLH Repurchase Transaction, SWLH will be required to repurchase, and the District will be required to sell, the SWLH Land within 180 days of receipt of such notice for the SWLH Value less the sum of (i) \$2,444,155.00 (the contribution amount provided by SWLH pursuant to the letter dated May 23, 2014, (“**Contribution Amount**”)) (ii) all costs (including without limitation transaction costs, transfer and recordation taxes and reasonable third-party professional costs) incurred by SWLH (a) in connection with the transfer of the SWLH Property to the District in the Land Exchange (but not the costs incurred in acquiring the District Property from the District) and (b) in connection with the SWLH Repurchase Transaction and (iii) the value of any impairments to the SWLH Property incurred during the period the SWLH Property was owned by the District, including the value of terminated leases and license agreements. The documentation of the SWLH Repurchase Transaction shall be in accordance with the documentation of the Land Exchange, *mutatis mutandis*. Each Party shall execute such documents and take such action as shall be reasonably requested by the other Party hereto to confirm or to effectuate the SWLH Repurchase Transaction under this Section 10.18.

(c) In the event timely notice is received by SWLH that the District is requiring the District Repurchase Transaction (along with notice of the SWLH Repurchase Transaction pursuant to paragraph (b) above), SWLH will be required to sell, and the District will be required to repurchase, the District Land and all Improvements thereon to the District within 180 days of receipt of such notice for the District Value plus the sum of all costs (including without limitation transaction costs, transfer and recordation taxes and reasonable third-party professional costs) incurred by SWLH (a) in connection with the purchase of the District Property from the District in the Land Exchange and (b) in connection with the District Repurchase Transaction. The documentation of the District Repurchase Transaction shall be in accordance with the documentation of the Land Exchange, *mutatis mutandis*. Each Party shall execute such documents and take such action as shall be reasonably requested by the other Party hereto to confirm or to effectuate the District Repurchase Transaction under this Section 10.18. The obligation of SWLH to sell the District Land and all Improvements thereon pursuant to this Section 10.18(c) shall be expressly conditioned upon the prior or concurrent consummation of the SWLH Repurchase Transaction pursuant to Section 10.18(b).”

4. Flip Protection. If SWLH closes on the sale of all or substantially all of the District Property pursuant to a Third Party Sale within the Flip Protection Period, then within

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thirty (30) days after such closing, SWLH shall pay to the District 100% of the Net Profit, if any, actually received by SWLH in respect of such Third Party Sale. The following definitions shall apply to this Section 4:

“Flip Protection Period” shall mean the period that begins on the date of Closing and expires on the earliest to occur of the following: (i) the third (3rd) anniversary of the date of Closing, (ii) the date on which the District Lease shall expire or otherwise terminate, and (iii) the date of Commencement of Construction.

“Third Party Sale” shall mean a sale of the District Property to a third party purchaser that is not affiliated with SWLH or with any direct or indirect owner of SWLH, other than a sale pursuant to foreclosure or deed in lieu of foreclosure.

“Net Profit” shall mean the excess, if any, of the Net Sales Price over the Reeves Acquisition Costs.

“Net Sales Price” shall mean the purchase price received by SWLH in respect of the Third Party Sale, less all costs incurred by SWLH in connection with such Third Party Sale (including without limitation transaction costs, transfer and recordation taxes and reasonable third-party professional costs).

“Reeves Acquisition Costs” shall mean the sum of (i) the District Value; (ii) the Contribution Amount; (iii) all costs (including without limitation transaction costs, transfer and recordation taxes and reasonable third-party professional costs) incurred by SWLH in connection with the acquisition of the District Property from the District in the Land Exchange; and (iv) all design, engineering, construction, permitting, entitlement, legal and other pre-development and development costs incurred by SWLH in connection with the District Property.

“Commencement of Construction” shall mean that SWLH has (i) executed a construction contract with a general contractor for the construction of the redevelopment project (or first phase thereof); (ii) given such general contractor a notice to proceed under that construction contract; and (iii) obtained all permits needed to commence construction.

5. Mixed Use Covenant. At Closing, SWLH and the District shall execute and record against the District Land, immediately following the recordation of the District Deed, the covenant attached hereto as Exhibit A.

6. Lease Terms.

a. The following is hereby added as Section 4 of the form of District Lease attached to the Original Agreement:

“4. TERMINATION RIGHT.”

District shall have a one (1)-time option to terminate this Lease effective as of any date on or after the first anniversary of the Lease Commencement Date (“**Termination Date**”), if and only if

(i) District provides Landlord with written notice exercising this option to terminate (and setting forth the Termination Date) at least twelve (12) months prior to the Termination Date, time being of the essence and (ii) there is no District Default as of the date District delivers such termination notice to Landlord. In addition, if District is in a default as of the Termination Date, Landlord shall have the right to deem District's exercise of the termination option null and void. For the avoidance of doubt, the termination option set forth in this paragraph expires automatically upon District's exercise of its extension option under Section 6 hereof. If the District exercises its option to terminate the Lease in accordance with this Section 4, then this Lease shall expire on the Termination Date with the same force and effect as if the Termination Date were the last day of the Lease Term hereof."

b. Section 6 of the form of District Lease attached to the Original Agreement is hereby deleted and replaced with the following:

"6. EXTENSION OPTION.

Provided that (i) this Lease shall be in full force and effect and (ii) a District Default does not exist at the time of District's exercise of the option or at the commencement of the option term, District shall have one (1) option to extend the Lease Term by six (6) months. District must provide to Landlord at least twelve (12) months prior to the expiration of the initial Lease Term (as set forth in Section III(14) of DC DRES Form L-102TIA) a written notice of the exercise of the option to extend the Lease Term, time being of the essence. If notification of the exercise of this option is not timely given and received, such option shall automatically expire. Annual Rent applicable to the Premises for the option term shall be equal to one hundred fifteen percent (115%) of the Annual Rent in effect in the final Lease Year of the initial Lease Term (as set forth in Section III(14) of DC DRES Form L-102TIA). All other terms of this Lease shall remain in effect during such extended Lease Term. For the avoidance of doubt, the extension option set forth in this paragraph expires automatically upon District's exercise of its termination option under Section 4 hereof."

c. In Section III of DC DRES Form S-102TIA attached to the Original Agreement as part of the form of District Lease, (a) Section 14.c shall read, "12 months"; (b) Section 15.a shall read, "115% of Annual Rent during prior Lease Year"; (c) Section 15.b shall read, "6 months"; (d) Section 15.c shall read "1"; and (d) Section 15.d shall read, "12 months".

7. Council Action. The District hereby agrees that, if the Council of the District of Columbia, or any agency of the District of Columbia, or other applicable law, places any conditions, restrictions or requirements on Council Approval or on the consummation of the Land Exchange as set forth in the Agreement, or places any encumbrances or limitations upon the District Property, or upon the use or development thereof, in connection with the Land Exchange, which conditions, restrictions, requirements, encumbrances or limitations have a material impact on the terms of the Agreement or the value of the District Property (as determined by SWLH in its sole discretion), then the District will negotiate in good faith with SWLH to amend the Agreement in order to preserve the expectations of the parties as set forth in the Agreement.

8. Ratification. Except as expressly modified by this Amendment, all other terms and conditions of the Original Agreement shall remain unchanged and are hereby ratified and confirmed in all respects.

9. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed under seal as of the date first above written.

DISTRICT:

DISTRICT OF COLUMBIA, by and through the
Department of General Services

By: 
Name: BRIAN HANSON
Title: DIRECTOR

SWLH:

SW LAND HOLDER, LLC

By: JACO SW Land, LLC, its managing
member

By: JACO Manager, Inc., its managing member

By: 
Name: Matthew J. Klein
Title: President JKA
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EXHIBIT A

Form of Use Covenant

[see attached]

DEVELOPMENT COVENANT

THIS DEVELOPMENT COVENANT ("Covenant") is made as of _____, 20__ between the District of Columbia, a municipal corporation acting by and through the [Department of General Services] ("District"), and _____, a _____ ("Owner").

RECITALS:

A. Owner owns the real property located in the District of Columbia and described on Exhibit A hereto (the "Property").

B. Owner intends to demolish the improvements existing on the Property as of the date of this Covenant, and to develop and construct new improvements ("**Replacement Improvements**").

C. Owner desires to subject the Property to the covenants set forth herein for the benefit of the District.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth in this Covenant, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the District and Owner hereby agree as follows, intending to be legally bound:

1. **Mixed Use.** Owner hereby agrees that the Property shall be subject to the requirement that one hundred thousand (100,000) square feet of the gross floor area (defined below) that can be included in the Replacement Improvements under Applicable Zoning Regulations (defined below) shall be reserved for non-residential uses (*e.g.*, office, hotel or retail space) ("**Commercial Space**"); provided, however, that:

(a) while one hundred thousand (100,000) square feet is the minimum gross floor area of Commercial Space required to be reserved in accordance with this Section 1, Owner shall endeavor to include up to one hundred fifty thousand (150,000) square feet of Commercial Space in any Replacement Improvements, which inclusion shall depend upon prevailing market conditions as determined by Owner; and

(b) the Commercial Space need not be the first space constructed or leased in any Replacement Improvements, and the Commercial Space may be the last space constructed or leased in any Replacement Improvements (by way of example and without limitation, if 500,000 square feet of gross floor area may be constructed on the Property, Owner may construct a purely residential development containing 400,000 square feet of gross floor area without violating this Section 1, provided that the remaining 100,000 square feet of gross floor area would be reserved for Commercial Space); and

(c) in the event that any Commercial Space is not leased to tenants within two (2) years of the date on which a certificate of occupancy is issued for base-building improvements (*i.e.*, core and shell) with respect to such Commercial Space (despite Best Commercially Reasonable Business Efforts on the part of Owner to lease such Commercial Space to tenants), Owner may convert such Commercial Space to residential use upon thirty (30)

days prior written notice to the District detailing Owner's Best Commercially Reasonable Business Efforts to lease the Commercial Space. If during such thirty (30) day period the District reasonably objects that Owner has failed to use Best Commercially Reasonable Business Efforts to lease the Commercial Space, by written notice to Owner setting forth the basis of such objection ("**District Notice**"), then Owner and the District, each acting reasonably and in good faith, shall endeavor to resolve such dispute within thirty (30) days after the District Notice. At any time after expiration of such thirty (30) day period, Owner shall have the right to submit such dispute to binding arbitration in accordance with the expedited commercial arbitration rules of the American Arbitration Association. Such arbitration shall be conducted by a single arbitrator who shall be a licensed real estate broker in Washington D.C. Such arbitrator shall be selected by mutual agreement of Owner and the District, and failing agreement shall be selected by the President of the Commercial Real Estate Brokerage Association of Greater Washington, DC. Such arbitration shall be completed within sixty (60) days after the District Notice. Owner and the District shall each pay one-half of the fees and expenses of the arbitrator.

The term "**gross floor area**" shall have the meaning given to it under the Applicable Zoning Regulations.

The term "**Applicable Zoning Regulations**" shall mean the zoning regulations applicable to the Property at the time Owner applies for its first building permit in connection with any Replacement Improvements.

The term "**Best Commercially Reasonable Business Efforts**" shall mean that the Owner is timely and diligently taking, or causing to be taken, in good faith, the steps usually and customarily taken by an experienced developer of space similar to the Commercial Space socking with reasonable due diligence to lease such space (including installing building signage, engaging a capable listing broker, listing the Commercial Space on Co-Star or a similar database, creating of a website, and preparing marketing materials), on terms which in Owner's good faith judgment are commercially reasonable.

2. **Public Areas.** The Replacement Improvements will provide for a maximum of 3,000 square feet of ground floor area on the street level of the Property that, in conjunction with the adjacent public space, will be available for community events, including a weekly farmer's market. Owner reserves the right to impose reasonable rules, regulations, policies and procedures with respect to the programming and use of such portion of the Property.

3. **LEED Designation.** Owner shall obtain a LEED Silver (or higher) certification from the U.S. Green Building Council for the construction of the core and shell of the Replacement Improvements.

4. **Community Engagement Open House.** Owner shall hold a community engagement open house prior to the design of any Replacement Improvements.

5. **Covenants Running with Land.** The covenants set forth in this Covenant shall be covenants running with and binding upon the Property, and shall be binding upon the owners from time to time of the Property. If a party no longer owns an interest in the Property, such party shall have no further obligation under this Covenant.

6. **Enforcement.** The covenants set forth in this Covenant (i) shall be for the benefit of, and be enforceable by, the District and (ii) shall not be for the benefit of, or be enforceable by, any other party (including any member of the public or any party claiming on behalf of the District or on behalf of the public or any member thereof). The District's sole remedy for any breach of this Covenant shall be an action for injunction or specific performance. The District shall have no claim for damages under this Covenant.

7. **Duration.**

(a) The covenants set forth in Section 1 hereof shall terminate and be of no further force or effect upon the earliest to occur of the following: (i) Owner signs leases for a total of 100,000 square feet of gross floor area of Commercial Space at the Property, (ii) all Commercial Space that has not been leased as Commercial Space is converted to residential use pursuant to Section 1(c) hereof, (iii) any Replacement Improvements are subsequently replaced with new improvements, and (iv) the date that is two (2) years of the date on which a certificate of occupancy is issued for base-building improvements (*i.e.*, core and shell) with respect to the Commercial Space.

(b) The covenants set forth in Section 2 hereof shall terminate on the date that is ten (10) years after issuance of the first certificate of occupancy for the Replacement Improvements.

(c) The covenants set forth in Section 3 hereof shall terminate upon issuance of LEED certification for the Replacement Improvements.

(d) The covenants set forth in Section 4 hereof shall terminate and be of no further force or effect upon the earliest to occur of the following: (i) the community engagement open house described in Section 4 and (ii) the issuance of the first building permit in connection with the Replacement Improvements.

(e) Upon written request of Owner or the District following the termination of any or all of the covenants set forth in this Covenant pursuant to this Section 7, Owner and the District shall execute and record in the Land Records of the District of Columbia an instrument memorializing the termination.

8. **Miscellaneous.**

(a) The captions in this Covenant are for convenience only and will not be deemed to expand or limit the meaning of this Covenant.

(b) This Covenant shall be governed by, and construed in accordance with, the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have caused this Covenant to be executed as of the date first above written.

OWNER:

By: _____
Name:
Title:

District of Columbia) ss:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ on behalf of the Owner, whose name is signed to the foregoing Development Covenant bearing date on the ____ day of _____, 201__, personally appeared before me in said jurisdiction, and, being personally known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Development Covenant, and acknowledged said Development Covenant to be the act and deed of the Owner for the purposes therein set forth.

Given under my hand and seal this ____ day of _____, 201__.

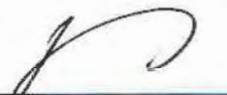
Notary Public

My Commission Expires: _____



DISTRICT:

DISTRICT OF COLUMBIA, by and through the
[Department of General Services]

By: 
Name: Brian Hawdon
Title: DIRECTOR

Approved as to Legal Sufficiency:

D.C. Office of the Attorney General

By: _____

District of Columbia) ss:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ on behalf of the DISTRICT OF COLUMBIA, whose name is signed to the foregoing Development Covenant bearing date on the ____ day of _____, 201__, personally appeared before me in said jurisdiction, and, being personally known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Development Covenant, and acknowledged said Development Covenant to be the act and deed of the District of Columbia for the purposes therein set forth.

Given under my hand and seal this ____ day of _____, 201__.

Notary Public

My Commission Expires: _____



EXHIBIT A

Description of Property

[see attached]

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Parcel One:

Lot numbered Two Hundred Nine (209) in Square numbered Two Hundred Four (204) in the subdivision made by D. C. Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 175 at folio 147.

SAVING AND EXCEPTING THEREFROM all that part being that certain air space lot or parcel of land taxed as Lot numbered 7000 in Square 204 more particularly described as follows:

BEGINNING at a point due East 9.00 feet from the front corner common to Lots 208 and 209 in Square 204, said point being on the southerly right-of-way line of "V" Street, N.W., and running thence due East 71.00 feet with the said southerly right-of-way line of "V" Street; thence the three following courses and distances across said Lot 209: due South 184.00 feet; thence due West 71.00 feet; thence due North 184.00 feet to the place of beginning of this description, containing a horizontal area of 13,064 square feet more or less, and being that portion of public space above the existing sub flooring slab extending vertically from the top of the roof slab of the Municipal Office Building garage below, elevation 103.25 feet to a point 100.00 feet above said top of Municipal Office Building garage roof slab to an elevation of 203.25 feet.

NOTE: At the date hereof the above described remainder of Lot 209 is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred Forty-four (844) in Square numbered Two Hundred Four (204).

Parcel Two:

Part of Lot numbered Two Hundred Nine (209) in Square numbered Two Hundred Four (204) in the subdivision made by D. C. Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 175 at folio 147, being that certain air space more particularly described as follows:

BEGINNING at a point due East 9.00 feet from the front corner common to Lots 208 and 209 in Square 204, said point being on the southerly right-of-way line of "V" Street, N.W., and running thence due East 71.00 feet with the said southerly right-of-way line of "V" Street; thence the three following courses and distances across said Lot 209: due South 184.00 feet; thence due West 71.00 feet; thence due North 184.00 feet to the place of beginning of this description, containing a horizontal area of 13,064 square feet more or less, and being that portion of public space above the existing sub flooring slab extending vertically from the top of the roof slab of the Municipal Office Building garage below, elevation 103.25 feet to a point 100.00 feet above said top of Municipal Office Building garage roof slab to an elevation of 203.25 feet.

NOTE: At the date hereof the above described remainder of Lot 209 is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Seven Thousand (7000) in Square numbered Two Hundred Four (204).