

**ECKINGTON YARDS DEVELOPMENT  
COMMUNITY BENEFITS AGREEMENT**

This Community Benefits Agreement (the “**Agreement**”) is agreed upon as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and between JBG/Boundary 1500 Harry Thomas Way, L.L.C. and JBG/Boundary Eckington Place, L.L.C. (collectively, “**Developer**”), the Eckington Citizens Association (“**ECA**”), and Renee T. Lewis, the Representative of Advisory Neighborhood Commission 5E’s Single Member District 03 (“**Lewis**”, collectively with ECA, the “**Community Parties**”, collectively with ECA and Developer, the “**Parties**,” each a “**Party**”).

WHEREAS, Developer is developing the proposed project (the “**Project**”) at 1611-1625 Eckington Place, NE (Lots 2001-2008, also known as Lot 805, Square 3576) and 1500 Harry Thomas Way, NE (Lot 814, Square 3576) (collectively, the “**Property**”) which is located in Ward 5 and Advisory Neighborhood Commission 5E in the District of Columbia and is the subject of Z.C. Case No. 15-15; and

WHEREAS, ECA is a non-profit community association which represents residents of the Eckington neighborhood in Ward 5 (including the residents of the neighborhood surrounding the Property) and focuses on programs, initiatives and activities focused on enhancing the Eckington community and the quality of life for its residents; and

WHEREAS, ANC 5E is a governmental advisory board, that is comprised of the residents of the neighborhoods near the Property, and has a purpose including gathering and communicating feedback from residents that are directly affected by government action. The Property is located in ANC 5E03; and

WHEREAS, Developer and the Community Parties share a mutual goal to expedite the completion of the development of the Project and for Developer to provide additional benefits or safeguards for the nearby community and neighbors relating to the construction process and the Parties desire to clarify their understandings with respect to the same.

NOW THEREFORE, for good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I**

**Purpose**

1.1 The recitals set forth above are hereby incorporated in this Agreement as substantive provisions hereof.

1.2 The purpose of this Agreement is to provide for a concerted and coordinated effort by the Parties to expedite the completion of the development of the Project and for Developer to provide additional benefits or safeguards for the neighbors relating to the construction process.

## **ARTICLE II**

### **Definitions**

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“**Agencies**” shall mean any District of Columbia governmental authority (including, but not limited to, the Zoning Commission, the Office of Planning, the Department of Consumer and Regulatory Affairs, and the Department of Transportation) that provide comment on or approve the design and construction of the Project.

“**Agreement**” shall mean this Community Benefits Agreement, including all attachments.

“**DDOT**” shall mean the District Department of Transportation.

“**Developer**” shall mean JBG/Boundary 1500 Harry Thomas Way, L.L.C. and JBG/Boundary Eckington Place, L.L.C.

“**Development Approvals**” shall mean: (1) approval by all relevant Agencies of the Planned Unit Development and Zoning Map Amendment application (PUD – ZC Case No. 15-15); (2) approval by the Department of Consumer and Regulatory Affairs and any other Agencies (if applicable) of permits for the Project and all plans, drawings and other items submitted in connection therewith; and (3) any other government approvals or permits requested by Developer for construction, development, and operation of the Project, including without limitation, issuance by the Department of Transportation of public space permits to construct the Project or for the temporary or permanent use or occupancy of public space relating thereto.

“**Implementation Committee**” a sub group established by the Parties to discuss strategies for implementation of the policies and programs set forth in this Agreement.

“**Project**” shall mean a mixed-use project to be constructed on the Property, consisting of approximately 700 residential units and up to approximately 77,200 gross square feet of commercial uses.

“**Property**” shall mean 1611-1625 Eckington Place, NE (Lots 2001-2008, also known as Lot 805, Square 3576) and 1500 Harry Thomas Way, NE (Lot 814, Square 3576).

## **ARTICLE III**

### **Traffic Mitigation and Improvement and Mass Transit Encouragement**

**3.1 RPP Restriction.** During the PUD process, Developer shall include in its application the concept of a prohibition on all unit owners or tenants in the Project from obtaining a Residential Parking Permit ("**RPP**") from the D.C. Department of Motor Vehicles ("**DMV**"). If the pending PUD application (Z.C. Case No. 15-15) is approved by the Zoning Commission, Developer shall include in the condominium bylaws, public offering statement, purchase agreement, deeds, and/or leases provisions prohibiting unit owners or residents from obtaining an RPP.

**3.2 Car Share Spaces.** Developer shall provide no less than two (2) car share spaces on the Property, subject to the demand of car share companies to locate such spaces on the Property. A minimum of two (2) car share companies will operate or manage such car share spaces on the Property, subject to the demand of car share companies to utilize the Property. Developer shall work to locate such car share spaces within the parking garage on the Property as a primary option, and then on the Property but exterior to the parking garage as a second option.

**3.3 Bike Share Station.** Developer shall fund the purchase and installation of a BikeShare docking station of at least standard size within a quarter mile radius of the Property. Specifically, Developer shall work with the NoMA Business Improvement District staff, DDOT, and the Capital BikeShare program to design and locate such Capital BikeShare docking station. The first such option shall be to place a new Capital BikeShare docking station within the new NoMA park, across Harry Thomas Way from the Property. If such docking station is not planned, Developer agrees to upsize the existing docking station located on the southwest corner of the Q Street and Eckington Place, NE intersection to an installation that meets the current demand as of the Effective Date.

**3.4 Updated Traffic Study.** Developer shall fund and provide the Community Parties with a traffic study reflecting the Project proposed as of the Effective Date. Such traffic study shall incorporate the scoping elements required by DDOT and shall be submitted (as may be amended at the request of DDOT) to the Zoning Commission as part of the PUD process.

**3.5 Restrictions on Truck Traffic on R Street.** Developer shall support Community Party efforts to restrict, remove or reduce truck traffic on the 200 block of R Street, NE, in order to allow for a continuous stretch of no truck traffic from North Capitol Street to 3<sup>rd</sup> Street, NE.

## **ARTICLE IV**

### **Neighborhood Community Space and Commercial Space Users**

**4.1 Neighborhood Community Space.** Developer shall make available conference or meeting space within the Project for use by the community free of charge, as described in this Section. Such space would be usable both for the residents of the Project and residents of the surrounding community through the ECA or ANC 5E (or a committee or a single member district constituency meeting thereof) in coordination with the property manager of the Project. The location of this space may be relocated by Developer, at its sole but reasonable discretion, if related to another tenant's need for space, security issues, or due to operational needs of the Project, at any time.

**4.2 Retail Space Uses.** Developer shall work with the Community Parties to obtain input for programming for the retail space within the Project’s commercial component. During the period of initial lease up of the retail space, Developer shall solicit input from the Community Parties regarding the types of users desired by the neighborhood and make commercially reasonable attempts to incorporate the input received into the retail merchandising plan. The community input shall be obtained from at least two public meetings in the Eckington neighborhood and an online survey made available to Eckington residents. In addition to soliciting feedback, Developer shall make commercially reasonable attempts to seek out community serving retailers including, but not limited to, a neighborhood market, a bakery, a wine shop, a coffee shop/café, and/or a dry cleaners. Developer shall work to include and encourage retail uses in the Project that are in accordance with the types of uses set forth in the Ward 5 Works Study, dated August 2014.

**ARTICLE V**

**Affordable Proffers**

**5.1 Affordable Residential Units.** Developer shall set aside 8% of the total amount of the residential square footage in the Project as affordable housing for households earning up to 60% of the Washington, DC Area Median Income (“AMI”).

**5.2 Location of Affordable Residential Units.** Developer shall locate the affordable units described in this Article V within the Project rather than locating them in another part of the District of Columbia or providing a financial contribution to satisfy the set aside requirements described in Section 5.1. Developer shall integrate the affordable residential units among the market rate units in the Project and shall distribute the affordable units as evenly as possible throughout the Project’s unit types in accordance with the distribution requirements typically approved by the Zoning Commission.

**5.3 Affordable Retail.** Developer shall provide a \$10/SF subsidy to the commercial market area rents in order to attract and sustain innovative retailers and maker users supported by the goals and initiatives of Ward 5. The subsidy shall be provided for no less than 10,000 square feet of commercial retail space within the Project during the initial lease up of the property.

**ARTICLE VI**

**Site Planning and Neighborhood Improvement**

**6.1 Neighborhood Street Banners.** Developer shall work with the Community Parties to manage the design and installation of banners denoting the Eckington neighborhood on streetlights and/or lampposts surrounding the Property. The Parties shall work with DDOT to review such process and determine the area where such banners shall be installed. Developer shall provide up to \$20,000.00 to the effort to design and install such banners, upon issuance of the Zoning Commission Order approving the Project. Payment for the design and installation comprising such amount shall be made directly to the vendors selected by the Community Parties (or the ANC) no earlier than the effective date of the entitlement approvals and within 60 days after written documentation therefore is presented to Developer.

**6.2 NoMA Park.** Developer shall donate \$25,000 towards the design, planning and implementation of the proposed park located adjacent to the site across from Harry Thomas Way NE. Payment for the design and improvements comprising such amount shall be made directly to the NoMA Business Improvement District (“**NoMA BID**”) no earlier than the effective date of the entitlement approvals and within 60 days after written documentation therefore is presented to Developer.

**6.3 MBT Security Improvements.** Developer shall donate \$25,000 towards improving safety measures along the Metropolitan Branch Trail, with a preference towards areas of the trail north of R Street NE. Payment for the improved security measures shall be made directly to the NoMA BID or DDOT no earlier than the effective date of the entitlement approvals and within 60 days after written documentation therefore is presented to Developer.

**6.5 Adopt-A-Block.** Developer shall participate in the adopt-a-block program pursuant to the terms stipulated by the District of Columbia Office of the Clean City. The Developer shall adopt a minimum of 2 square blocks for 3 terms, which will result in a total of 6 years.

**6.6 Urban Garden.** Developer shall proffer an urban/community garden. The Developer shall work with the Community Parties to identify a set aside location within the park proposed by the NoMa BID. If this option is not viable, the Developer shall work with Commissioner Lewis to identify a location within the 5E03 ANC boundary.

**6.7 Public Art.** Developer shall proffer up to \$20,000 for the purchase and installation of public art to be located on or adjacent to the Project site.

## **ARTICLE VII**

### **Implementation Committee**

**7.1 Goals of Implementation Committee.** To assist with implementation of this Agreement, Developer shall meet with the Community Parties in good faith and shall exercise reasonable effort to develop strategies for implementation of the policies and programs set forth in this Agreement. Developer and the Community Parties shall establish a working group of representatives for this purpose, to be known as the “**Implementation Committee.**” The Implementation Committee shall meet at least quarterly up to the completion of construction of the Project, which shall be evidenced by the issuance of the final base building Certificate of Occupancy initially required for the occupancy of the Project, at which time the Implementation Committee will cease meeting. At such meetings, any of the Community Parties or Developer may raise issues related to implementation of this Agreement, in an effort to facilitate open dialogue, resolve implementation challenges, and advance the goals of both the Community Parties and Developer regarding the Project. All Parties shall ensure that representatives attending Implementation Committee meetings are appropriate individuals for issues to be discussed.

**7.2 Meeting Space.** Developer shall schedule meetings for the Implementation Committee in a convenient and handicapped accessible space.

**ARTICLE VIII**

**Community Support Obligations**

**8.1 Community Support for the Project.** In light of Developer’s commitments set forth in this Agreement, the ECA supports the Project. Therefore, ECA will undertake the supportive efforts set forth in this Article.

**8.2 Letters of Support.** ECA shall send a letter in unqualified support of the Project to the appropriate Agency or reviewing entity, including ANC 5E, the District of Columbia Zoning Commission, and/or, if necessary, the District of Columbia Public Space Committee, prior to the consideration of all Development Approvals for the Project.

**8.3 Media and Public Availability.** The Community Parties shall work with Developer to prepare a collaborative media strategy regarding shared support for the Project, if necessary.

**8.4 Covenant Not To Sue or Testify Against.** The Community Parties hereby covenant not to sue, challenge, appeal or contest, administratively, judicially or publicly, any of the Development Approvals. Furthermore, the Community Parties agrees not to pursue judicial challenges to, or testify in opposition at any public hearings (or any continuations of hearings) concerning any of the Development Approvals.

**8.5 Permissible Public Comments.** Notwithstanding the above requirements, ECA retains the right to make public comments regarding Development Approvals suggesting changes in aspects of the documents and approval terms being considered, so long as such comments are consistent with the letter and spirit of the provisions of this Agreement. ECA agrees that before making such public comments, it shall use its best efforts to address the issues in question with Developer and provide sufficient time to remedy such items.

**ARTICLE IX**

**Miscellaneous Provisions**

**9.1 Compliance With Law.** This Agreement shall be enforced only to the extent that it is consistent with the laws of the District of Columbia and the United States. If any provision of this Agreement is held by a court to be in conflict with law, the applicable law shall prevail over the terms of this Agreement, and the conflicting provisions of this Agreement shall not be enforceable.

**9.2 Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

**9.3 Remedies Default.** Failure by any Party to perform or comply with any term or provision of this Agreement, if not cured, shall constitute a default under this Agreement and render the entire agreement null and void.

**9.4 Sixty-Day Right to Cure.** If any Party believes that another Party is in default of this Agreement, it shall provide written notice to the allegedly defaulting Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, except where a delay may cause irreparable injury, provide sixty (60) days to cure the alleged default, commencing at the time of the notice. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

**9.5 Implementation Meetings and Mediation.** Before or during the sixty (60) day right-to-cure period described above, the Parties may attempt to resolve any alleged default at the regularly scheduled implementation meetings, or in mediation requested by any Party.

**9.6 Compliance Information.** Upon request from a Party, another Party hereto shall provide any records or information reasonably necessary to monitor compliance with the terms of this Agreement. No Party shall request the same or similar records or information more often than once per quarter, except to the extent that the nature of the obligation being monitored requires more frequent reporting, as reasonably agreed upon by the Parties.

**9.7 Waiver.** The waiver by any Party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

**9.8 Entire Agreement.** The Agreement contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral, except those executed concurrently with this Agreement. Concurrent execution is defined as execution within five business days. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the parties hereto.

**9.9 Appointment of ECA Representative.** The elected President of the ECA, or his or her appointed agent, shall speak and correspond with the Developer on ECA's behalf. Developer may rely on statements made and approvals or comments given by the President of the ECA pursuant to this Agreement as constituting the agreement of ECA regarding such issue. ECA may appoint another representative by written notice to Developer.

**9.10 Authority of Signatories.** The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of their respective parties.

**9.11 Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

**9.12 Further Assurances.** The parties hereto agree to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

**9.13 Binding Arbitration.** A Party shall pursue only binding arbitration to enforce any term of this Agreement that has allegedly been breached. A Party may seek arbitration relief ordering, and the arbitrator shall have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring a defaulting Party to comply with this Agreement. Arbitration shall be conducted in Washington, D.C. under the rules of the American Arbitration Association (the “**Rules**”). Each Party shall bear its own fees and other costs, except where a Party is found by final judgment of the arbitrator to have been in default of this Agreement, in which case the prevailing Party shall be entitled to attorneys’fees and arbitration costs from the defaulting Party.

**9.14 Termination of Agreement.** In the event that the District of Columbia Zoning Commission does not approve the PUD and Zoning Map Amendment application in ZC Case No. 15-15, the Zoning Commission approves the PUD and Zoning Map Amendment with conditions that Developer (in its sole and absolute discretion) determines make the Project not economically feasible (Developer will have one year from the date of the written decision in ZC Case No. 15-15 to make this determination), or Developer withdraws Z.C. Case No. 15-15 or terminates the approved PUD, this Agreement shall be deemed terminated. In such an event of termination, the Parties shall have no further rights or obligations hereunder.

**9.15 Term.** This Agreement shall remain in effect until the earliest of: (i) the date on which Developer completes the construction of the Project, as evidenced by the issuance of the final base building Certificate of Occupancy initially required for occupancy of the Project (“**Completion**”), (ii) six (6) years from the Effective Date, at which time it shall terminate and be of no further force or effect, unless construction has commenced, in which even this clause (ii) shall not apply, or (iii) termination of the Agreement pursuant to Section 10.14.

*[SIGNATURES ON FOLLOWING PAGES]*



**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have hereby duly executed and delivered this agreement as of the date first above written.

**DEVELOPER**

**JBG/Boundary 1500 Harry Thomas Way, L.L.C.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JBG/Boundary Eckington Place, L.L.C**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMUNITY PARTIES**

**ECA**

Eckington Citizens Association,  
a District of Columbia \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LEWIS**

\_\_\_\_\_  
Name: Renee T. Lewis  
Title: Representative of Advisory Neighborhood  
Commission 5E's Single Member District  
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