

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this “**Agreement**”) is made and entered into as of April 24, 2015 between (i) the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Department of Housing and Community Development, with an address of 1800 Martin Luther King, Jr. Ave., SE, Washington, D.C. 20020 (“**Seller**” or “**District**”), and (ii) **Mount Vernon Plaza Associates, L.L.P.**, a District of Columbia limited liability partnership (the “**Purchaser**”).

RECITALS:

- A. WHEREAS, the Purchaser is the owner of that certain 250 unit apartment rental complex called Mount Vernon Plaza Apartments (the “**Improvements**”);
- B. WHEREAS, the Improvements are located at 930 M St., NW, Washington, DC 20001 (Sq. 0369, Lots 0068) as more particularly described in **Exhibit A** attached hereto (the “**Land**”). The Land is owned by District and the Purchaser leases the Land pursuant to a Lease Agreement dated April 27, 1987, which was recorded in the land records on November 24, 1987 as Instrument No. 66426 (the “**Lease**”);
- C. WHEREAS, Section 4 of the Lease includes a purchase option in favor of the Purchaser to purchase the Land for \$2,000,000, that may be exercised in 2021 (the “**Lease Option**”);
- D. WHEREAS, the Purchaser currently owes \$1,211,776.51 towards the Lease Option purchase price;
- E. WHEREAS, the Purchaser financed the Project with a bond loan from the District of Columbia Housing Finance Agency (“**Bond Loan**”), and a Housing Development Grant loan from Seller in the original principal amount of \$4,141,850 (“**HDG Loan**”) on November 23, 1987 with funds from a Housing Development Grant from HUD (the Bond Loan and the HDG Loan are collectively, the “**Original Financing**”);
- F. WHEREAS, the Original Financing required that not less than sixty-three (63) units at the Property be set-aside for persons and families whose annual income qualifies as “very low-income” or “low-income” as defined in the District of Columbia Housing Finance Agency Act (the “**Act**”) for a period of twenty (20) years from the date on which 50% of the units in the Project were occupied (the “**Affordability Restrictions**”);
- G. WHEREAS, the Purchaser has paid off the Bond Loan and the HDG Loan has a current balance of \$3,353,626.49;
- H. WHEREAS, in an effort to assist the tenants living in the Set-Aside Units from experiencing an immediate rent increase due to the expiration of the Affordability

Restrictions, the Purchaser and District entered into a Rental Housing Preservation Agreement (the “**RHP Agreement**”), attached hereto as **Exhibit B**;

- I. WHEREAS, the RHP Agreement provides among other terms that the District shall allow the Purchaser to exercise the Lease Option in 2015, in exchange for Purchaser keeping the Set-Aside Units in place, as more particularly set forth in the RHP Agreement; and
- J. WHEREAS, pursuant to the Lease and D.C. Code § 42-3171.03 (2008 Supp.) (the “**Act**”), following a public hearing on the proposed terms and conditions of this Agreement after at least thirty (30) days public notice, DHCD will be authorized to convey the Land to Purchaser (“**Disposition Authority**”).

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

ARTICLE I DEFINITIONS

The above Recitals are hereby incorporated by reference as though the same were written herein. As used in this Agreement, unless the context otherwise requires or it is otherwise herein expressly provided, the following capitalized terms shall have the following meanings:

Appurtenances: collectively, (i) all rights, ways, easements, privileges and appurtenances to the Land, (ii) all strips and gores appurtenant to the Land, and (iii) any land lying in the bed of any streets, roads and alleys appurtenant to the Land.

Code: the Internal Revenue Code of 1986, as the same may be amended from time to time and all federal regulations promulgated pursuant thereto.

Effective Date: the date that the Agreement is signed by the Seller.

HUD: is the United States Department of Housing and Urban Development.

Improvements: means buildings, structures (surface and subsurface), installations and other improvements, including any fixtures and appurtenances as shall constitute real property, located on the Land.

Land: has the meaning given in the Recitals.

Person: a natural person or any legal, commercial or governmental entity, including a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.

Property: collectively, the Land, Improvements, and Appurtenances, together with all

right, title and interest of Seller in and to the Improvements.

RHP Agreement: is that certain Rental Housing Preservation Agreement entered into between DHCD and the Purchaser on December 15, 2014, as amended by that certain First Amendment to Rental Housing Preservation Agreement dated as of _____, 2015.

Satisfactory Title: has the meaning given in Section 3.2.1.

Set-Aside Tenants: shall have the meaning set forth in the RHP Agreement. .

Set-Aside Units: shall have the meaning set forth in the RHP Agreement.

Settlement: consummation of the sale and purchase of the Land provided for in this Agreement to occur as provided in Article VI hereof; provided that Settlement shall not be deemed to have occurred until such time as: (i) all deliveries required under Article VI have been made, (ii) the Settlement Agent has irrevocably committed itself in writing to issue the Title Policy, (iii) good and sufficient funds are available so that the Settlement Agent can disburse the Seller's proceeds to the Seller, and (iv) the Deed has been recorded in the land records of the District of Columbia.

Settlement Agent: Answer Title located at 10 G Street, NE, Suite 510, Washington, D.C. 20002.

Settlement Date: shall be held thirty (30) days after the District has received Disposition Authority, but no later than June 30, 2015, unless otherwise agreed to by the Seller and the Purchaser.

Title Company: Answer Title located at 10 G Street, NE, Suite 510, Washington, D.C. 20002.

Title Policy: a title policy to be issued by the Title Company insuring Purchaser.

ARTICLE II PURCHASE OF PROPERTY

Agreement to Purchase and Provide Subsidy. Subject to and in accordance with the terms of this Agreement, District shall convey to Purchaser and Purchaser shall accept from District for the Subsidy Obligation (as defined below) value, all of District's right, title, and interest in and to the Land.

Purchaser shall pay the Subsidy Obligation as follows:

(a) deliver a promissory note in the original principal amount of Four Million Five Hundred Sixty-five Thousand Four Hundred Three Dollars (\$4,565,403) (the "**Subsidy Obligation**") payable to District at Closing in the aggregate amount of the outstanding HDG Loan balance and the outstanding Lease Option amount. (the "**Note**"); and

(b) deliver a signed Memorandum of Rental Housing Preservation Agreement to be held by the District as security for the performance of the RHP, which Memorandum shall be recorded against the Land, a form of which is attached hereto as **Exhibit D**.

ARTICLE III SELLER'S COVENANTS

3.1 Materials Related to the Property. Within five (5) days after the Effective Date, Seller shall deliver to Purchaser copies of any and all documents, court orders, reports, permits or similar materials of any kind that relate to and/or have a material legal effect on the Land (collectively, the “**Materials**”).

3.2 Title. Seller shall own good and marketable fee simple title to the Land, subject to all matters of record (such title, “**Satisfactory Title**”) and shall convey the same to Purchaser at Settlement.

3.3 Exclusivity. Until Settlement or such time as this Agreement is terminated, neither Seller nor any agent acting on behalf of Seller shall directly or indirectly solicit, initiate or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any inquiries or proposals from, any third party relating to any transaction involving the sale of the Land.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Seller Represents and Warrants to Purchaser that:

4.1.1 Authority of Seller. Seller has the right and power: (i) to enter into this Agreement, and (ii) to consummate the transaction provided for herein. Seller warrants that no party other than Seller has any right to convey fee simple title to the Land.

4.1.2 Intentionally Deleted.

4.1.3 Violations of Applicable Law and/or Defaults Under Court Orders. Except for those certain violation notices previously disclosed to Seller by Purchaser, Seller has not received any written notice of a violation of law which remains uncorrected as of the date hereof. To the best of Seller’s knowledge, the Seller is not in default or violation of any order, writ, injunction, statute, decree or demand of any governmental authority with respect to the Land or the conveyance thereof, and entry into this Agreement will not cause Seller to become in default or violation of any said order, writ, statute, injunction decree or demand.

4.1.4 Consents. Except for the Disposition Authority, there are no consents, approvals or authorizations required to be obtained by Seller. All necessary consents, approvals or authorizations have been obtained by Seller in connection with execution, delivery and performance of this Agreement.

4.1.5 Compliance with Other Instruments. Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any agreement or order which is binding on Seller.

4.1.6 Intentionally deleted.

4.1.7 Litigation. There are no judgments, liens, claims, litigation, arbitration, proceedings, zoning or otherwise, pending at law or in equity or threatened in writing against Seller, or against or relating to the Land (other than the violation notices previously disclosed to Seller by Purchaser), or the transactions contemplated by this Agreement.

4.1.8 Condemnation. There is no pending or threatened eminent domain or to the best of the Seller's knowledge, condemnation for the temporary or permanent taking of the Land by any governmental authority.

4.1.9 Restrictions, Easements. To the best of Seller's knowledge, except as set forth in the Title Policy, there are no covenants, conditions, restrictions, rights-of-way, easements or liens, if any, affecting all or any portion of the Land.

4.1.10 Fee Title. Seller owns good and marketable fee simple title to the Property free and clear of all liens and monetary encumbrances. Seller has not granted or conveyed to any Person, other than the Purchaser, any right or option to acquire the Property or any part thereof or interest therein, or any easement (not set forth in the Title Policy), license or lease, or any other matter of record affecting the Land.

4.2 Purchaser Represents and Warrants to Seller that:

4.2.1 Authority. Purchaser has the power to enter into this Agreement and to consummate the transaction provided for herein, and the undersigned has full power, authority and legal right to enter into this Agreement and to consummate the transaction provided for herein.

4.2.2 Compliance with Other Instruments. Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Purchaser of any agreement or order that is binding on Purchaser.

4.3 Intentionally deleted.

ARTICLE V CONDITIONS OF SETTLEMENT

5.1 Purchaser's Conditions. The obligation of Purchaser to consummate the acquisition of the Land under this Agreement is subject to the satisfaction of each of the following conditions, any or all of which may be waived in whole or in part by Purchaser:

- (a) Each of Seller's representations and warranties set forth in this Agreement shall be true and correct, as of the Settlement Date;
- (b) Seller shall have performed all of its obligations and observed and complied with all covenants and conditions under this Agreement required to be performed, observed or complied with at or prior to Settlement;
- (c) Seller shall have caused the following instruments to be released of record: (i) that certain Second Deed of Trust dated November 23, 1987 from Purchaser to Steven N. Gell, as trustee, for the benefit of The District of Columbia, and (ii) that certain Agreement Concerning Housing Development Grant Covenants dated October 6, 1987 entered into by and between Purchaser and Seller.
- (d) Seller shall have caused the Lease to be terminated and released of record.

5.2 Failure of Purchaser's Condition. In the event of a failure of any condition precedent set forth in Section 5.1, Purchaser, at its sole discretion and election, may (i) terminate this Agreement, (ii) waive the condition and proceed to Settlement, (iii) extend the Settlement Date for such additional period of time (not to exceed 60 days in the aggregate) as may be reasonably required to allow such condition to be satisfied (provided that it is of a kind and nature that it can be satisfied within 60 days), or (iv) if such failure arises from Seller's breach of this Agreement, avail itself of any additional remedies provided in Section 7.2.

5.3 Seller's Conditions. The obligation of Seller to convey the Land under this Agreement is subject to the satisfaction of each of the following conditions, any or all of which may be waived in whole or in part by Seller:

- (a) Purchaser shall deliver the Subsidy Obligation into escrow with the Settlement Agent on or before the Settlement Date;
- (b) Each of Purchaser's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Settlement Date; and
- (c) Purchaser shall have performed all of its material obligations and observed and complied with all material covenants and conditions under this Agreement required at or prior to Settlement.

5.4 Failure of Seller's Condition. In the event of a failure of any condition precedent set forth in Section 5.3, Seller, at his sole election, may (a) terminate this Agreement upon written notice to Purchaser; (b) waive the condition and proceed to Settlement; (c) extend the Settlement Date for such additional period of time, not to exceed sixty (60) days in the aggregate, as may be reasonably required to allow such condition to be satisfied or (d) avail itself of any remedies provided in Section 7.1.

ARTICLE VI SETTLEMENT

6.1 Settlement; Settlement Costs. Settlement shall occur on or before the Settlement Date, unless otherwise extended in writing by mutual agreement of the parties, provided that Settlement shall not occur unless and until the parties have satisfied or waived all covenants and conditions to Settlement contained herein. Seller and Purchaser shall cooperate to effect Settlement through an escrow with the Settlement Agent. Purchaser shall pay (i) the cost of any title commitment and survey obtained by Purchaser, and the premium for the Title Policy, and (ii) all costs of Purchaser's due diligence. Seller shall pay (i) recordation fees or taxes with respect to any document that Seller must obtain and record in order to achieve Satisfactory Title, and (ii) the local transfer and recordation taxes incident to the recordation of the Deed (hereinafter defined). Any other closing costs shall be paid by Seller and Purchaser, respectively, in accordance with local custom.

6.2 Seller's Deliveries. On or before the Settlement Date, Seller shall deliver to the Settlement Agent (executed by Seller, and, if appropriate, notarized) the following documents:

- (a) a special warranty deed transferring fee simple title to the Land to the Purchaser substantially in the form attached hereto and incorporated herein as **Exhibit C** (the "Deed");
- (b) a Combined Real Property Deed Recordation Tax and Real Property Transfer Tax Return (Form FP-7);
- (c) the Memorandum of Rental Housing Preservation Agreement;
- (d) a customary owner's title affidavit in a form reasonably acceptable to Purchaser and the Settlement Agent; and
- (e) such additional documents as may be reasonably necessary or customary to consummate the transaction contemplated by this Agreement.

6.3 Purchaser's Deliveries. On or before the Settlement Date, Purchaser shall deliver to the Settlement Agent the following:

- (a) the Note;
- (b) the Memorandum of Rental Housing Preservation Agreement;
- (c) a Combined Real Property Deed Recordation Tax and Real Property Transfer Tax Return (Form FP-7), duly executed and notarized by Purchaser; and
- (d) such additional documents as may be reasonably necessary or customary to consummate the transaction contemplated by this Agreement.

6.4 Prorations. All real and personal property taxes, assessments and all other public or governmental charges (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Settlement Date), utility charges (if any) and other items customarily adjusted

shall be apportioned between the Seller and Purchaser as of 11:59 p.m. on the day immediately preceding the date of Settlement.

ARTICLE VII DEFAULT AND TERMINATION

7.1 Purchaser's Default. If the transaction herein contemplated shall not be consummated on the date of Settlement because of Purchaser's default, then Seller may either (a) terminate this Agreement or (b) seek to enforce specific performance of the terms of this Agreement.

7.2 Seller's Default. If the transaction herein contemplated shall not be consummated on the date of Settlement because of Seller's default, then provided Purchaser is not then in default of its obligations under this Agreement, Purchaser shall have the sole remedy of specific performance. Under no circumstances shall Purchaser have any other legal or equitable rights, claims or remedies including without limitation to any actual, direct, indirect or consequential damages arising from Seller's default, or any other person or persons, named or unnamed, disclosed or undisclosed, with or for whom Seller may be acting, for or based upon, Seller's default.

ARTICLE VIII ESCROW

8.1 Seller and Purchaser hereby engage Settlement Agent to serve as the escrow agent for the parties under this Agreement. Settlement Agent agrees to hold the Subsidy Obligation in accordance with the terms hereof.

8.2 Settlement Agent shall hold the Subsidy Obligation in an escrow account until such time as Settlement Agent is directed to disburse said funds in accordance with this Agreement and any other written instructions submitted to the Settlement Agent by the parties hereto.

ARTICLE IX MISCELLANEOUS

9.1 Modifications and Waivers. No modification, waiver, amendment, discharge or change of this Agreement, except as otherwise provided herein, shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought. This Agreement contains the entire agreement and understanding between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

9.2 Successors and Assigns. All terms of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

9.3 Governing Law. This Agreement is intended to be performed in the District of Columbia and shall be construed and enforced in accordance with the internal laws thereof.

9.4 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered if delivered personally, the next business day if sent by recognized air or overnight courier, or three (3) days after being deposited in the United States mail if sent by registered or certified mail, return receipt requested, and postage prepaid, to a party at its address set forth below, or at such other address as such party may specify from time to time by written notice to the other party:

If to Purchaser:

Mount Vernon Plaza Associates, L.L.P.
c/o Michele Z. Ball
4029 Ironbound Rd., Suite 100
Williamsburg, VA 23188

With a copy to:

Bush Construction Corporation
c/o Mary L. Digges, President
4029 Ironbound Rd., Suite 100
Williamsburg, VA 23188

And

Roger N. Simon, Esq.
Friedlander Mislner, PLLC
5335 Wisconsin Avenue, N.W.
Suite 600
Washington, D.C. 20015

If to Seller:

District of Columbia
Department of Housing and Community Development
Property Acquisition and Disposition Division
1800 Martin Luther King Avenue, SE
Washington, D.C. 20020
Attention: Karanja Slaughter, Manager
Telephone: 202-442-7285

With a copy to:

District of Columbia
Department of Housing and Community Development
Office of the General Counsel

1800 Martin Luther King Avenue, SE
Washington, D.C. 20020
Attention: Vonda J. Orders, General Counsel
Telephone: 202-442-6991

9.5 Waiver. Purchaser reserves the right (in its sole discretion) to waive, in whole or in part, any provision in this Agreement for the benefit of Purchaser. Seller reserves the right (in its sole discretion) to waive, in whole or in part, any provision in this Agreement for the benefit of Seller. No consent or waiver, either express or implied, by any party to or of any breach or default by the other party in the performance of such other party's obligations under this Agreement, shall be deemed to be a consent or waiver to or of any other breach or default by such other party in the performance of any other obligation hereunder. Failure of any party to complain or to pursue complaints with respect to any acts or failure of any party to declare the other party in default, irrespective of how long such default continued, shall not constitute a waiver by such party of its rights and remedies under this Agreement or otherwise at law or in equity.

9.6 Broker's Fees. The parties hereto represent and warrant to each other that there has been no broker, sales representative, finder, agent or anyone else involved in this transaction who would be entitled to a commission or other compensation on account of the sale of the Property from Seller to Purchaser. Seller agrees to indemnify, protect, defend and hold Purchaser harmless from and against all claims, losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges resulting from Seller's breach of the foregoing representation. The provisions of this Section 9.6 shall survive Settlement or the earlier termination of this Agreement.

9.7 Exhibits. All exhibits and schedules referred to herein and attached hereto are incorporated by reference into this Agreement.

9.8 Severability. If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.

9.9 Construction. Each party hereto (and its counsel, if applicable) has reviewed and revised (or requested revisions of or has been afforded the opportunity to make such requests) this Agreement, and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be applicable in the construction and interpretation of this Agreement.

9.10 Time Periods. Any time period hereunder which expires on, or any date hereunder which occurs on, a Saturday, Sunday or legal United States or District of Columbia holiday, shall be deemed to be postponed to the next business day. The first day of any time period hereunder which runs "from" or "after" a given day shall be deemed to occur on the first business day subsequent to that given day.

9.11 Captions. The captions of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any term hereof.

9.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

9.13 Intentionally deleted.

9.14 Conflict of Interest; Seller's Representatives Not Individually Liable. No member, official or employee of the District of Columbia Government shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, limited liability company, partnership, joint venture, association, trust, or other entity in which he or she is, directly or indirectly, interested. No member, official or employee of Seller shall be personally liable to Purchaser, or any successor in interest, in the event of any default or breach by Seller or for any amount which may become due to Purchaser, or any successor in interest, or on any obligations under the terms of this Agreement or in any manner arising herefrom.

9.15 Assignment. This Agreement may not be assigned by either party without the written consent of the non-assigning party.

9.16 Waiver of Jury Trial. PURCHASER AND SELLER EACH HEREBY WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH THE ENFORCEMENT BY SELLER, OR PURCHASER, OF ANY OF THEIR RESPECTIVE RIGHTS AND REMEDIES HEREUNDER.

9.17 Jurisdiction. For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the parties hereby irrevocably consent and submit to the jurisdiction and venue of the courts of the District of Columbia. For the service of process, Seller hereby irrevocably consents to accept service made by the District on the District of Columbia Registrar of Wills with a copy of service made to Seller and Seller's counsel, if any, in accordance with the notice provisions set forth in this Agreement.

9.18 Third Party Beneficiaries. Each party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto.

9.19 Anti-Deficiency Act. Seller and Purchaser acknowledge and agree that the obligations of the Purchaser to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Purchaser is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. In accordance with § 446 of the Home Rule Act, D.C. Official Code § 1-204.46, no official representing the Purchaser is authorized to obligate or expend any

amount unless the amount has first been approved and appropriated by act of Congress and is lawfully available.

[Remainder of Page Intentionally Blank. Signatures Appear on Following Page.]

Signature Page to Agreement of Purchase and Sale

IN WITNESS WHEREOF, as of the date first above written, (i) the Seller, and (ii) Purchaser have caused this Agreement to be executed in their names, and acknowledge and deliver this Agreement as each Person's free act and deed.

SELLER:

Approved for legal sufficiency

General Counsel's Office for
the Department of Housing and
Community Development

By: _____
Name: Vonda J. Orders
Title: General Counsel

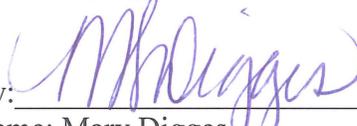
DISTRICT OF COLUMBIA, by and
through the Department of Housing and
Community Development

By: _____
Name: Mary R. (Polly) Donaldson
Title: Director

PURCHASER:

**MOUNT VERNON PLAZA
ASSOCIATES, L.L.P.**, a District of
Columbia limited liability partnership

Bush Construction Corporation,
a Virginia corporation,
the Managing General Partner

By:  _____
Name: Mary Digges
Title: President

Exhibits

- Exhibit A Legal Description
- Exhibit B Rental Housing Preservation Agreement
- Exhibit C Deed
- Exhibit D Memorandum of Rental Housing Preservation Agreement

JOINDER OF SETTLEMENT AGENT

The undersigned is joining this Agreement to evidence its agreement to comply with all terms, conditions, obligations and other provisions applicable to the Settlement Agent under this Agreement.

SETTLEMENT AGENT

ANSWER TITLE

By: _____
Name: Cindy Eagle
Title: Senior Vice President, Operations

Exhibit A
(Legal Description)

Lot 68, Square 369 as shown in book 179, page 163 among the records of the Office of the Surveyor of the District of Columbia.

Together with easement granted by instrument dated April 6, 1987, recorded September 25, 1987 as Instrument No. 54852 among the Land records of the District of Columbia.

Exhibit B

(Rental Housing Preservation Agreement)

Rental Housing Preservation Agreement

This Rental Housing Preservation Agreement (the "Agreement") is made this 15th day of December, 2014 (the "Effective Date"), by and between Mount Vernon Plaza Associates, L.L.P., a District of Columbia limited liability partnership ("Developer") and the District of Columbia, acting by and through the Department of Housing and Community Development ("DHCD").

Recitals

- A. WHEREAS, the Developer is the owner of that certain 250 unit apartment rental complex (the "Project") located at 930 M St., NW, Washington, DC 20001 (Sq. 0369, Lots 0068) called Mount Vernon Plaza Apartments (the "Property");
- B. WHEREAS, the Property as more particularly described in Exhibit A attached hereto, is owned by DHCD and the Developer leases the Property pursuant to a Lease Agreement dated April 27, 1987, which was recorded in the land records on November 24, 1987 as Instrument No. 66426 (the "Lease");
- C. WHEREAS, the Lease includes an option in favor of the Developer to purchase the Property for \$2,000,000, that may be exercised in 2021 (the "Lease Option");
- D. WHEREAS, the Developer owes \$1,211,776.51 towards the Lease Option purchase price;
- E. WHEREAS, the Developer financed the Project with a bond loan from the District of Columbia Housing Finance Agency ("DCHFA"), which was refunded pursuant to the terms of that executed Amended and Restated Financing and Regulatory Agreement with respect to those certain Multifamily Housing Revenue Refunding Bonds (Mount Vernon Apartments), Series 1991, in the aggregate principal amount of \$13,105,000 ("Bond Loan") on November 1, 1991. The affordability restrictions for the Bond Loan were secured by a Declaration of Restrictive Covenants dated as of November 1, 1987 from the Developer for the benefit of DCHFA (the "Restrictive Covenants");
- F. WHEREAS, the Restrictive Covenants required that not less than sixty-three (63) units in the Project (the "Set-Aside Units") be set-aside for persons and families whose annual income qualifies as "very low-income" or "low-income" as defined in the District of Columbia Housing Finance Agency Act (the "Act") for a period of twenty (20) years from the date on which 50% of the units in the Project were occupied (the "Affordability Restrictions");
- G. WHEREAS, the Developer also financed the Project with a Housing Development Grant loan from DHCD in the original principal amount of \$4,141,850 ("HDG Loan") on November 23, 1987 with funds from a Housing Development Grant from HUD, which incorporated the Affordability Restrictions;

- H. WHEREAS, the HDG Loan has a current balance of \$3,353,626.49;
- I. WHEREAS, the Developer paid off the Bond Loan and the Affordability Restrictions in the Bond Loan and the HDG Loan have expired;
- J. WHEREAS, the Lease is still in force; and
- K. WHEREAS, in an effort to assist the tenants living in the Set-Aside Units from experiencing an immediate rent increase, the Developer and DHCD have agreed that in exchange for DHCD allowing the Developer to exercise the Lease Option in 2014 or 2015, at the option of the Developer, and using monies that would have gone towards the repayment of the HDG Loan, the Developer shall fund a subsidy that is the difference between the Set-Aside Rents (as defined below) and the market rents for the Project, to keep the Set-Aside Units in place for a minimum period of eighty-four (84) months through December 31, 2021.

NOW THEREFORE, the Parties agree as follows:

1. Recitals. The recitals shall be incorporated in this agreement as though the same were written herein.
2. Conveyance of Property; Lease Termination. Developer and DHCD acknowledge and agree that a condition precedent to the effectiveness of this Agreement, is DHCD's agreement to convey the fee simple interest in the Property to the Developer within sixty (60) days of the date of the Effective Date. The Developer and DHCD acknowledge and agree that upon the conveyance of the Property to the Developer, the Lease and all of the terms and provisions thereof shall be NULL AND VOID without any further action by the Developer and DHCD, and DHCD agrees to cooperate with Developer, so that Developer may record, at Developer's expense any instruments among the land records of the District of Columbia to evidence such termination.
3. Term of Agreement; Subsidy Amount. Developer and DHCD agree that Developer shall execute a promissory note in favor of DHCD in the aggregate amount of the outstanding HDG Loan balance and the Purchase Option (the "Note"). The Note shall be dated January 1, 2015 and be in the principal amount of \$4,565,403 shall bear interest at the rate of four percent (4%), compounded monthly on an amortization schedule in the form attached hereto as **Exhibit B** to be maintained by the Developer, with a copy to be made available to DHCD upon request. Upon execution of the Note, the Developer shall not be required to make any further lease payments under the Lease. The Developer shall not make payments to DHCD during the Preservation Period (as defined below), but shall apply the payments due to DHCD to provide a subsidy that shall be the difference between the Set-Aside Rent and the market rent for the Set-Aside Units (the "Subsidy Amount") for a period to begin on January 1, 2015 through January 31, 2022 ("Preservation Period"). For purposes of this Agreement and the Note, the Subsidy

Amount will be treated by the Developer and DHCD as the required monthly payments on the Note. The Subsidy Amount shall be documented as "Rental income from Subsidy" on the Developer's annual audited financial statements.

4. Set-Aside Units; Outreach to Former Set-Aside Tenants. The parties agree that the attached list represents all of the current Set-Aside Units occupied by tenants ("Set-Aside Tenants") that initially qualified under the Affordable Restrictions, attached hereto as Exhibit C (the "Set-Aside Unit List"). The parties hereto acknowledge that all of such tenants will require recertification by the managing agent of the Developer to determine if such tenant qualifies for a Set Aside Unit. Any tenant that does not so qualify shall receive a notice giving such tenant six months to vacate or pay a rent increase to market rent. Set-Aside Tenants who continue to qualify annually for Set-Aside Rent will not be charged more than Set-Aside Rent during the Preservation Period. Developer agrees to use commercially reasonable efforts to contact all tenants who vacated Set-Aside units in the last 12 months due to receiving a rent increase notice to determine their interest in returning to the Project. Developer shall use commercially reasonable efforts to make available a unit in the Project to any former tenant that qualified for a set-aside unit that wishes to return. Notwithstanding the foregoing, the Developer shall restore the number of Set-Aside Units back up to 63 units, within twelve months of the Effective Date of this Agreement, provided that in no event will the Set-Aside Units exceed 63 units.
5. Set-Aside Rents; Refund of Excess Rent Paid. The Developer agrees that during the Preservation Period it will not charge the Set-Aside Tenants rents that exceed the maximum of 30% of fifty percent (50%) of the area median income of the Washington, DC metropolitan area ("AMI") as determined by the U.S. Department of Housing and Urban Development ("HUD"), adjusted for family size, and divided by twelve (the "Set-Aside Rent"). In addition, the Developer agrees to refund to any Set-Aside Tenants the amount of rent collected that was in excess of the difference between the Set-Aside Rent and the market rent for the Set-Aside Units previously paid by any such Set-Aside Tenant. Any such refunds shall be payable by the Developer within sixty (60) days following the conveyance of the Property by DHCD to the Developer, and shall be deemed a payment on the promissory note and posted to the amortization schedule on the date paid. Notwithstanding the foregoing, the refund payments shall not reduce the Preservation Period even if such payments cause the balance of the Note to be reduced to zero prior to the end of the Preservation Period.
6. Reporting Requirements. During the Preservation Period, the Developer shall provide annually within one hundred twenty (120) days after the end of the Developer's fiscal year the following:
 - a. an updated rent roll reflecting the current rents and the number of current occupied units on the Set-Aside Unit List,
 - b. an amortization schedule showing the application of the Subsidy Amount on a monthly basis to the outstanding Note (see Exhibit B for example of the amortization table),
 - c. copies of all income certifications performed for Set-Aside Tenants, and

- d. copies of leases for each Set-Aside Tenant residing in a Set-Aside Unit to be submitted electronically.
- 7. Lease; Notice. Developer shall add a provision to its lease with Set-Aside Tenants stating when the Preservation Period shall end. Developer shall give Set-Aside Tenants at least 12 months prior written notice of the end of the Preservation Period, and shall provide DHCD with a copy of such notice. Developer will not be required to lease Set-Aside Units during the final 12 months of the Preservation Period.
- 8. Miscellaneous.
 - a. Confidentiality; Disclosure under FOIA. The District's Freedom of Information Act ("FOIA") under Code § 2-531 et seq., (2008 Supp.), generally mandates the disclosure of documents in the possession of the District upon the request of any person, unless the content of the document falls within a specific exemption category. Section 2-534 of the D.C. Official Code states that information may be exempt from disclosure, if it is "trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."
 - b. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as herein expressly contained or referred to in this Agreement. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
 - c. Severability. If any part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraph and articles shall not be affected thereby in keeping with the limitations of the Anti-Deficiency Act as such may affect DHCD. All such parts, paragraphs, and articles shall be deemed severable.
 - d. Construction. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof. The masculine gender shall include the feminine and vice versa. Any word that is singular may also be considered plural, and any word that is masculine may also be considered feminine or neuter and vice versa.
 - e. Application of Law. This Agreement shall be construed and interpreted in accordance with the laws of the District of Columbia.
 - f. Counterparts. This Agreement may be executed in counterparts and all such counterparts so executed shall constitute one Agreement, binding upon all of the parties

hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

g. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered by hand, or (ii) one (1) day following the date of posting, if mailed postage prepaid by certified or registered mail, return receipt requested or delivered by recognized overnight courier. Any of the below-listed parties shall, using reasonable efforts, provide notice of any change in address.

If to Developer, addressed to:

Mount Vernon Plaza Associates, L.L.P.
c/o Michele Z. Ball, general partner
4029 Ironbound Rd., Suite 100
Williamsburg, VA 23188

With a copy to:

Bush Construction Corporation
c/o Mary L. Digges, President
4029 Ironbound Rd., Suite 100
Williamsburg, VA 23188

And

Roger N. Simon, Esq.
Friedlander Mislner, PLLC
5335 Wisconsin Avenue, N.W.
Suite 600
Washington, D.C. 20015

If to Department, addressed to:

District of Columbia, Department of Housing and Community Development
1800 Martin Luther King, Jr. Avenue, SE
Washington, DC 20020
ATTN: Director

With a copy to:

Office of the General Counsel
District of Columbia Department of Housing and Community Development
1800 Martin Luther King, Jr. Avenue, SE
Washington, DC 20020
ATTN: General Counsel

[Signature Page to Follow]

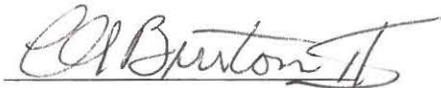
IN WITNESS WHEREOF, the parties have executed this Rental Housing Preservation Agreement as of the date first written above, by affixing their respective hands and seals hereunto.

WITNESS/ATTEST:

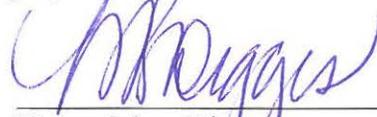
DEVELOPER

MOUNT VERNON PLAZA ASSOCIATES, L.L.P, a District of Columbia limited liability partnership

Bush Construction Corporation,
a Virginia corporation,
the Managing General Partner



By:



Name: Mary Digges
Title: President

WITNESS/ATTEST:

DEPARTMENT

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

By: _____ (Seal)

Name: Michael P. Kelly
Title: Director

Approved as to Legal Sufficiency:

General Counsel for the Department of
Housing and Community Development

Date: _____

IN WITNESS WHEREOF, the parties have executed this Rental Housing Preservation Agreement as of the date first written above, by affixing their respective hands and seals hereunto.

WITNESS/ATTEST:

DEVELOPER

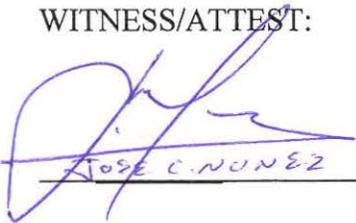
MOUNT VERNON PLAZA ASSOCIATES, L.L.P., a District of Columbia limited liability partnership

Bush Construction Corporation,
a Virginia corporation,
the Managing General Partner

By:

Name: Mary Digges
Title: President

WITNESS/ATTEST:

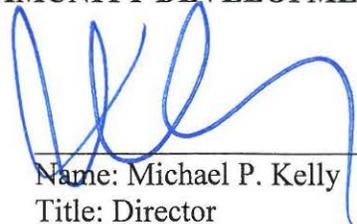


JOSE C. NUNEZ

DEPARTMENT

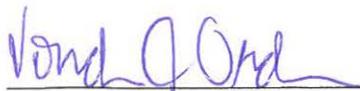
DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

By:



Name: Michael P. Kelly (Seal)
Title: Director

Approved as to Legal Sufficiency:



General Counsel for the Department of
Housing and Community Development

Date: Dec 12, 2014

EXHIBIT A
[Legal Description]

EXHIBIT A

Property Description

Lot 68, Square 369 as shown in book 179, page 163 among the records of the Office of the Surveyor of the District of Columbia.

Together with easement granted by instrument dated April 6, 1987, recorded September 25, 1987 as Instrument No. 54852 among the Land records of the District of Columbia.

EXHIBIT B
[Note Amortization Schedule]

EXHIBIT B

NOTE PAYABLE TO DHCD

Principal	4,565,393.00		
Interest	4.00%	Annually	
Payment	70,000.00	Est. Subsidy amt based on tenants in place	
Term	7	YEARS (estimated - will probably run out but	
		units in place per the agreement)	

Pay Date	Pay #	Payment	Interest	Principal	Loan Balance
01/01/15	1	50,000.00	15,217.98	34,782.02	4,530,610.98
02/01/15	2	150,000.00	15,102.04	134,897.96	4,395,713.01
03/01/15	3	52,000.00	14,652.38	37,347.62	4,358,365.39
04/01/15	4	54,000.00	14,527.88	39,472.12	4,318,893.27
05/01/15	5	56,000.00	14,396.31	41,603.69	4,277,289.59
06/01/15	6	58,000.00	14,257.63	43,742.37	4,233,547.22
07/02/15	7	60,000.00	14,111.82	45,888.18	4,187,659.04
08/02/15	8	70,000.00	13,958.86	56,041.14	4,131,617.90
09/01/15	9	70,000.00	13,772.06	56,227.94	4,075,389.96
10/02/15	10	70,000.00	13,584.63	56,415.37	4,018,974.60
11/01/15	11	70,000.00	13,396.58	56,603.42	3,962,371.18
12/02/15	12	70,000.00	13,207.90	56,792.10	3,905,579.08
01/01/16	13	70,000.00	13,018.60	56,981.40	3,848,597.68
02/01/16	14	70,000.00	12,828.66	57,171.34	3,791,426.34
03/01/16	15	70,000.00	12,638.09	57,361.91	3,734,064.43
04/01/16	16	70,000.00	12,446.88	57,553.12	3,676,511.31
05/02/16	17	70,000.00	12,255.04	57,744.96	3,618,766.35
06/01/16	18	70,000.00	12,062.55	57,937.45	3,560,828.90
07/02/16	19	70,000.00	11,869.43	58,130.57	3,502,698.33
08/02/16	20	70,000.00	11,675.66	58,324.34	3,444,373.99
09/01/16	21	70,000.00	11,481.25	58,518.75	3,385,855.24
10/02/16	22	70,000.00	11,286.18	58,713.82	3,327,141.42
11/01/16	23	70,000.00	11,090.47	58,909.53	3,268,231.89
12/02/16	24	70,000.00	10,673.64	59,326.36	3,208,905.53
01/01/17	25	70,000.00	10,696.35	59,303.65	3,149,601.88
02/01/17	26	70,000.00	10,498.67	59,501.33	3,090,100.56
03/04/17	27	70,000.00	10,300.34	59,699.66	3,030,400.89
04/03/17	28	70,000.00	10,101.34	59,898.66	2,970,502.23
05/04/17	29	70,000.00	9,901.67	60,098.33	2,910,403.90
06/03/17	30	70,000.00	9,701.35	60,298.65	2,850,105.25
07/01/17	31	70,000.00	9,500.35	60,499.65	2,789,605.60
08/04/17	32	70,000.00	9,298.69	60,701.31	2,728,904.28
09/01/17	33	70,000.00	9,096.35	60,903.65	2,668,000.63
10/02/17	34	70,000.00	8,893.34	61,106.66	2,606,893.97
11/01/17	35	70,000.00	8,689.65	61,310.35	2,545,583.61
12/02/17	36	70,000.00	8,485.28	61,514.72	2,484,068.89
01/01/18	37	70,000.00	8,280.23	61,719.77	2,422,349.12
02/01/18	38	70,000.00	8,074.50	61,925.50	2,360,423.62
03/04/18	39	70,000.00	7,868.08	62,131.92	2,298,291.70
04/03/18	40	70,000.00	7,660.97	62,339.03	2,235,952.67
05/04/18	41	70,000.00	7,453.18	62,546.82	2,173,405.84
06/03/18	42	70,000.00	7,244.69	62,755.31	2,110,650.53
07/04/18	43	70,000.00	7,035.50	62,964.50	2,047,686.03

EXHIBIT B

NOTE PAYABLE TO DHCD

Principal	4,565,393.00	
Interest	4.00%	Annually
Payment	70,000.00	Est. Subsidy amt based on tenants in place
Term	7	YEARS (estimated - will probably run out but units in place p

Pay Date	Pay #	Payment	Interest	Principal	Loan Balance
08/04/18	44	70,000.00	6,825.62	63,174.38	1,984,511.65
09/01/18	45	70,000.00	6,615.04	63,384.96	1,921,126.69
10/02/18	46	70,000.00	6,403.76	63,596.24	1,857,530.45
11/01/18	47	70,000.00	6,191.77	63,808.23	1,793,722.22
12/02/18	48	70,000.00	5,979.07	64,020.93	1,729,701.29
01/01/19	49	70,000.00	5,765.67	64,234.33	1,665,466.96
02/01/19	50	70,000.00	5,551.56	64,448.44	1,601,018.52
03/04/19	51	70,000.00	5,336.73	64,663.27	1,536,355.25
04/03/19	52	70,000.00	5,121.18	64,878.82	1,471,476.43
05/04/19	53	70,000.00	4,904.92	65,095.08	1,406,381.35
06/03/19	54	70,000.00	4,687.94	65,312.06	1,341,069.29
07/04/19	55	70,000.00	4,470.23	65,529.77	1,275,539.52
08/04/19	56	70,000.00	4,251.80	65,748.20	1,209,791.32
09/01/19	57	70,000.00	4,032.64	65,967.36	1,143,823.96
10/02/19	58	70,000.00	3,812.75	66,187.25	1,077,636.70
11/01/19	59	70,000.00	3,592.12	66,407.88	1,011,228.82
12/02/19	60	70,000.00	3,370.76	66,629.24	944,599.59
01/01/20	61	70,000.00	3,148.67	66,851.33	877,748.25
02/01/20	62	70,000.00	2,925.83	67,074.17	810,674.08
03/03/20	63	70,000.00	2,702.25	67,297.75	743,376.33
04/02/20	64	70,000.00	2,477.92	67,522.08	675,854.25
05/03/20	65	70,000.00	2,252.85	67,747.15	608,107.10
06/02/20	66	70,000.00	2,027.02	67,972.98	540,134.12
07/03/20	67	70,000.00	1,800.45	68,199.55	471,934.57
08/03/20	68	70,000.00	1,573.12	68,426.88	403,507.68
09/01/20	69	70,000.00	1,345.03	68,654.97	334,852.71
10/02/20	70	70,000.00	1,116.18	68,883.82	265,968.88
11/01/20	71	70,000.00	886.56	69,113.44	196,855.45
12/02/20	72	70,000.00	656.18	69,343.82	127,511.63
01/01/21	73	70,000.00	425.04	69,574.96	57,936.67
02/01/21	74	68,000.00	193.12	67,806.88	(9,870.21)
03/01/21	75	66,000.00	(32.90)	66,032.90	(75,903.11)
04/01/21	76	64,000.00	(253.01)	64,253.01	(140,156.12)
05/01/21	77	62,000.00	(467.19)	62,467.19	(202,623.31)
06/01/21	78	60,000.00	(675.41)	60,675.41	(263,298.72)
07/01/21	79	58,000.00	(877.66)	58,877.66	(322,176.38)
08/01/21	80	56,000.00	(1,073.92)	57,073.92	(379,250.30)
09/01/21	81	54,000.00	(1,264.17)	55,264.17	(434,514.47)
10/01/21	82	52,000.00	(1,448.38)	53,448.38	(487,962.85)
11/01/21	83	50,000.00	(1,626.54)	51,626.54	(539,589.39)
12/01/21	84	48,000.00	(1,798.63)	49,798.63	(589,388.02)

First Amendment to Rental Housing Preservation Agreement

This First Amendment to Rental Housing Preservation Agreement (the "Amendment") is made this 3rd day of April, 2015 (the "Effective Date"), by and between Mount Vernon Plaza Associates, L.P., a District of Columbia limited liability partnership ("Developer") and the District of Columbia, acting by and through the Department of Housing and Community Development ("DHCD").

Recitals

- A. WHEREAS, the Developer is the owner of that certain 250 unit apartment rental complex called Mount Vernon Plaza Apartments (the "Project") located at 930 M St., NW, Washington, DC 20001 (Sq. 0369, Lots 0068) (the "Property") as more particularly described in Exhibit A attached hereto;
- B. WHEREAS, the Property is owned by DHCD and the Developer leases the Property pursuant to a Lease Agreement dated April 27, 1987, which was recorded in the land records on November 24, 1987 as Instrument No. 66426 (the "Lease");
- C. WHEREAS, in addition to the Lease, DHCD made a loan to Developer in the original principal amount of \$4,141,850 ("HDG Loan") on November 23, 1987, which HDG Loan has a current outstanding balance of \$3,353,626.49;
- D. WHEREAS, the Developer and DHCD entered into that certain Rental Housing Preservation Agreement on December 15, 2014 (the "Agreement") with respect to the Project and the Property;
- E. WHEREAS, under the Agreement, Developer and DHCD agreed that Developer shall maintain 63 units in the Project as affordable for a period of at least 84 months, in exchange for DHCD agreeing to terminate the Lease and allow the Developer to exercise its option to acquire the Property in 2015 and to allow the Developer to use payments that would have been made under the purchase option contained in the Lease and the HDG Loan to provide a subsidy to Set-Aside Tenants (as defined below); and
- F. WHEREAS, Developer and DHCD wish to clarify certain terms of the Agreement and to extend the time period for the transfer of the Property to the Developer.

NOW THEREFORE, the Parties hereby amend the Agreement as follows:

- 1. Recitals. The recitals shall be incorporated in this Amendment as though the same were written herein; provided, however, in the event of any conflict between the terms of the Agreement, as amended by this Amendment, the terms of the Agreement, as amended hereby, shall govern and control.
- 2. Amendments.

- a. Section 2 of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“2. Conveyance of Property; Lease Termination. Developer and DHCD acknowledge and agree that a condition precedent to the effectiveness of this Agreement, is DHCD’s agreement to convey the fee simple interest in the Property to the Developer within five (5) months of the Effective Date of that certain First Amendment to Rental Housing Preservation Agreement entered into by and between the Developer and DHCD, time being of the essence. If such conveyance does not occur within such 5-month period, then in such event the Developer shall have the right to terminate this Agreement in its sole and absolute discretion upon 10 days’ notice to DHCD. The Developer and DHCD acknowledge and agree that upon the conveyance of the Property to the Developer, the Lease and all of the terms and provisions thereof shall be NULL AND VOID without any further action by the Developer and DHCD, and DHCD agrees to cooperate with Developer, so that Developer may record, at Developer’s expense any instruments among the land records of the District of Columbia to evidence such termination.”

- b. Section 3 of the Agreement is hereby amended by adding the following sentence to the end of such section:

“Notwithstanding anything set forth to the contrary in this Section 3, Developer and DHCD acknowledge and agree that “Surplus Cash” payments as defined in the DCHFA Regulatory Agreement recorded against the Property shall not be used for any payments on the Note or the HDG Loan or towards the payment of the purchase of the Property as contemplated by this Agreement.”

- c. Section 4 of the Agreement is hereby deleted in its entirety and is hereby replaced by the following:

“4. Set-Aside Tenants; Recertification Process.

a. Recertification of Current Tenants. The parties agree that only a “Set-Aside Tenant” (as defined below) shall be able to reside in a Set-Aside Unit. For all purposes of this Agreement, the term “Set-Aside Unit” shall mean a unit in which a qualified Set Aside Tenant legally resides. There shall be up to ten (10) Set-Aside Units for Low-Income Set-Aside Tenants, and up to fifty-three (53) Set-Aside Units for Very Low-Income Set-Aside Tenants. Notwithstanding the foregoing, if there are more than ten tenants on the Current Tenant List that have household income above the Very Low-Income limit, but less than the Low-Income limit, the Owner shall have the right to increase the number of Set-Aside Units available for Low-Income Set-Aside Tenants to prevent the displacement of such tenants. Attached to this Amendment as Exhibit B is a list of the persons

residing in Set-Aside Units as of December 31, 2014 (the "Current Tenant List"). Developer and DHCD agree that all households on the Current Tenant List must be re-certified by the managing agent of the Developer based on the eligibility criteria set by the Developer and submitted to DHCD (the "Set-Aside Tenant Selection Plan") to determine if such tenant still qualifies for a Set-Aside Unit. The determination of qualification for Low or Very Low Income for Set-Aside Tenants made at initial certification under this Agreement will remain in effect until the following annual re-certification of such Set-Aside Tenants. Tenants from the Current Tenant List in good standing who qualify as a "Set-Aside Tenant" will be allowed to remain as tenants at the Property pursuant to the terms of this Agreement. Upon the reasonable request of DHCD, Developer agrees to provide DHCD with information related to any Current Tenant who is found to be over-income after such re-certification. Any Current Tenant living in an initial Set-Aside Unit that is over-income but in good standing shall have the right to remain under the terms of their existing lease until the end of the current term. Any Current Tenant in an initial Set-Aside Unit that is over-income without an existing lease shall be issued a six month notice to vacate or pay an increase to market rent. During the six month notice to vacate such Current Tenant will continue to pay current rent.

b. Set-Aside Tenant. A Set-Aside Tenant shall be defined as an otherwise qualified household with either: (i) an income that is equal to or less than fifty percent (50%) of the area median income of the Washington, DC metropolitan area ("AMI") ("Very Low-Income"), or (ii) an income that is equal to or less than eighty percent (80%) of AMI ("Low-Income"), as published and adjusted from time to time by the U.S. Department of Housing and Urban Development ("HUD"), adjusted for family size and as determined by the Developer pursuant to the Set-Aside Tenant Selection Plan. Attached as Exhibit C are the current income limits and rents adjusted for family size for Set-Aside Tenants at 50% or 80% of AMI as of March 27, 2015. Developer agrees to use commercially reasonable efforts to contact all tenants who vacated Set-Aside Units in the last 12 months due to receiving a rent increase notice to determine their interest in returning to the Project. Notwithstanding the foregoing, DHCD and Developer acknowledge and agree that the Set-Aside Tenant Selection Plan includes minimum income requirements established by the Developer. In connection therewith, at the request of DHCD, Developer agrees that Current Tenants who qualified as Set-Aside Tenants at the time of initial occupancy, but who lack sufficient income at the time of re-certification to meet the minimum income established by the Set-Aside Tenant Selection Plan shall be treated as Set-Aside Tenants for all purposes of this Agreement provided that such tenant is otherwise in good standing. Developer shall use commercially reasonable efforts to make available a unit in the Project to any former tenant that qualifies as a Set-Aside Tenant that wishes to return. Notwithstanding the foregoing, the Developer shall restore the number of Set-Aside Units back up to 63 units, within twelve months of the Effective Date of this Agreement, provided that in no event will the Set-Aside Units exceed 63 units."

- d. Section 5 is hereby deleted in its entirety and the following is inserted in lieu thereof:

“5. Set-Aside Rents; Refund of Excess Rent Paid.

- a. Very Low-Income Rent. The Developer agrees that during the Preservation Period it will charge the Set-Aside Tenants that qualify as Very Low-Income rents equal to 30% of fifty percent (50%) of the area median income of the Washington, DC metropolitan area (“AMI”) as published and adjusted from time to time by the U.S. Department of Housing and Urban Development (“HUD”), adjusted for family size, and divided by twelve (the “Very Low-Income Set-Aside Rent”).
- b. Low-Income Rent. The Developer agrees that during the Preservation Period it will charge Set-Aside Tenants that qualify as Low-Income rents equal to 30% of 80% of AMI as published and adjusted from time to time by HUD, adjusted for family size, and divided by twelve (the “Low-Income Set-Aside Rent”).
- c. Refund of Excess Rent Paid. In addition, the Developer agrees to refund to all Current Tenants in good standing that qualify as Set-Aside Tenants the amount of rent collected that was in excess of the difference between the Set-Aside Rent at the time of lease renewal and the lease renewal rent for the Set-Aside Unit previously paid by any such Set-Aside Tenant. All refunds shall be payable by the Developer within thirty (30) days following the conveyance of the Property by DHCD to the Developer, and shall be deemed a payment on the promissory note and posted to the amortization schedule on the date paid. Notwithstanding the foregoing, the refund payments shall not reduce the Preservation Period even if such payments cause the balance of the Note to be reduced to zero prior to the end of the Preservation Period.”

- e. The following is added as a new paragraph “h” to Section 8:

“h. No Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to or shall confer any right, benefit or remedy upon any person other than the parties.”

3. Excepted as amended herein, the Agreement shall remain in full force and effect. This Amendment may be executed in counterparts and all such counterparts so executed shall constitute one document, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this First Amendment to Rental Housing Preservation Agreement as of the date first written above, by affixing their respective hands and seals hereunto.

WITNESS/ATTEST:

DEVELOPER

MOUNT VERNON PLAZA ASSOCIATES, L.L.P., a District of Columbia limited liability partnership

Bush Construction Corporation,
a Virginia corporation,
the Managing General Partner



By:



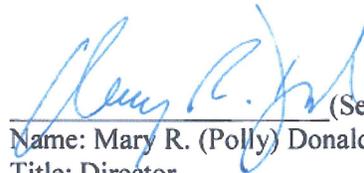
Name: Mary Digges
Title: President

DEPARTMENT

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

WITNESS/ATTEST:

By:


_____ (Seal)

Name: Mary R. (Polly) Donaldson
Title: Director

Approved as to Legal Sufficiency:



General Counsel for the Department of
Housing and Community Development

Date:

4/24/15

EXHIBIT A
[Legal Description]

EXHIBIT A

Property Description

Lot 68, Square 369 as shown in book 179, page 163 among the records of the Office of the Surveyor of the District of Columbia.

Together with easement granted by instrument dated April 6, 1987, recorded September 25, 1987 as Instrument No. 54852 among the Land records of the District of Columbia.

EXHIBIT B
[Current Tenant List]

EXHIBIT B

**WHH Trice and Company - Mount Vernon Plaza
As of 12/31/2014**

		Floor Plan	Unit Status	Name	Move In	Lease Start	Lease End
1	1-104	L2-2	905	Occupied	Viera, Efrain	11/16/2002	12/01/2013 11/30/2014
2	1-103	G2-2	865	Occupied	Beatty, Dominique	12/13/2008	01/01/2014 12/31/2014
3	1-202	D2-2	830	Occupied	Gebreselassie, Mulu	12/03/2010	01/01/2014 12/31/2014
4	1-225	B2-2	802	Occupied	Malase, Azeb	12/12/2009	01/01/2014 12/31/2014
5	1-309	W2-2	868	Occupied	Butler, Danielle	12/13/2003	01/01/2014 12/31/2014
6	1-719	D1-1	610	Occupied	Andrews, Quitel	12/13/2000	01/01/2014 12/31/2014
7	1-416	R2-2	925	Occupied-NTVL	Ghebremariam, Alem	12/01/1994	11/01/2013 10/31/2014
8	1-131	U2-2	846	Occupied	Jackson, Christine	02/01/1995	02/01/2014 01/31/2015
9	1-106	W2-2	868	Occupied	Akunwafor, Maureen	03/01/2010	03/01/2014 02/28/2015
10	1-212	G2-2	865	Occupied	Brown, Trayawn	02/17/2007	03/01/2014 02/28/2015
11	1-301	I2-2	880	Occupied	Saunders, Ebony	01/12/2000	03/01/2014 02/28/2015
12	1-303	G2-2	865	Occupied	Negash, Guadshet	03/01/2011	03/01/2014 02/28/2015
13	1-317	D1-1	610	Occupied	Nixon, Aisha	03/01/2007	03/01/2014 02/28/2015
14	1-T02	G1-1	637	Occupied	Abebe, Bayush	03/01/2010	03/01/2014 02/28/2015
15	1-513	I2-2	880	Occupied	Burrell McIntosh, Jessica	03/07/2009	04/01/2014 03/31/2015
16	1-604	M2-2	905	Occupied	Azieb Tesfamariam	04/01/2013	04/01/2014 03/31/2015
17	1-101	I2-2	880	Occupied	Douglas, Donna	03/17/2001	05/01/2014 04/30/2015
18	1-125	B2-2	802	Occupied	Bapari, MD Minto	04/15/2009	05/01/2014 04/30/2015
19	1-313	I2-2	880	Occupied	Peterson-Blackwell, Angela	04/22/2004	05/01/2014 04/30/2015
20	1-605	W2-2	868	Occupied	Woldeyohans, Etalem	05/01/2012	05/01/2014 04/30/2015
21	1-T05	D1-1	610	Occupied	Simma, Kidest	05/01/2012	05/01/2014 04/30/2015
22	1-1010	F2-2	868	Occupied	Ayele Woldemariam	07/01/2013	07/01/2014 06/30/2015
23	1-207	C1-1	610	Occupied	Williams, Ariana	07/01/2008	07/01/2014 06/30/2015
24	1-241	L2-2	905	Occupied	Belayhun, Zebene	06/22/2012	07/01/2014 06/30/2015
25	1-1011	W2-2	868	Occupied	Teferi, Kahsay	07/18/2011	08/01/2014 07/31/2015
26	1-407	D1-1	610	Occupied	Battle, Antonio	07/17/2004	08/01/2014 07/31/2015
27	1-417	D1-1	610	Occupied	Dibbru, Alem	07/17/2010	08/01/2014 07/31/2015
28	1-425	A2-2	802	Occupied	Davis, Tonya	07/07/2005	08/01/2014 07/31/2015
29	1-519	D1-1	610	Occupied	Jordan, Gregory	08/01/2005	08/01/2014 07/31/2015
30	1-914	P2-2	975	Occupied	Pitroipa, Antoine	08/01/2012	08/01/2014 07/31/2015
31	1-T18	F1-1	625	Occupied	Powell, Edward M.	07/10/1993	08/01/2014 07/31/2015
32	1-308	K1-1	760	Occupied	Yemer, Lubaba	09/01/2011	09/01/2014 08/31/2015
33	1-411	W2-2	868	Occupied	Begna, Alemseged	08/10/2010	09/01/2014 08/31/2015
34	1-412	F2-2	868	Occupied	McClain, Twala	08/20/2010	09/01/2014 08/31/2015
35	1-902	C2-2	830	Occupied	Mengesha, Martha	09/01/2011	09/01/2014 08/31/2015
36	1-318	F1-1	625	Occupied	Loo, Mary Ann	09/30/2009	10/01/2014 09/30/2015
37	1-105	G2-2	865	Occupied	Berhe, Aster	11/01/2010	11/01/2014 10/31/2015
38	1-108	K1-1	760	Occupied	Merkebu, Endegen	10/26/2009	11/01/2014 10/31/2015
39	1-404	M2-2	905	Occupied	Assefa, Yikal	11/01/2009	11/01/2014 10/31/2015
40	1-615	D1-1	610	Occupied	Pinckney, Tamika	10/11/2003	11/01/2014 10/31/2015
NTVL = Unit 1-416 Notice to vacate lease for unpaid rent							
1-103	G2-2	Beatty, Dominique - gave notice buying home with parents					

EXHIBIT C
[Set-Aside Unit Income Limits and Rent Schedule]

MOUNT VERNON PLAZA / RHPA INCOME LIMITS / RENTAL AMOUNTS
If 30% of 50% of AMI

Household Composition	<u>Net</u> Income of Twice the Required Rent / Annualized	<u>Gross</u> Monthly Income / Annualized as Determined by HUD and Published Annually	Monthly Rent
One Person	\$22,470	\$37,450	\$936.25
Two Persons	\$25,680	\$42,800	\$1,070.00
Three Persons	\$28,890	\$48,150	\$1,203.75
Four Persons	\$32,100	\$53,500	\$1,337.50
Five Persons	\$34,680	\$57,800	\$1,445.00

Effective 07/01/2014

MOUNT VERNON PLAZA / RHPA INCOME LIMITS / RENTAL AMOUNTS
If 30% of 80% of AMI

Household Composition	<u>Net</u> Income of Twice the Required Rent / Annualized	<u>Gross</u> Monthly Income / Annualized as Determined by HUD and Published Annually	Monthly Rent
One Person	\$28,770	\$47,950	\$1,198.75
Two Persons	\$32,880	\$54,800	\$1,370.00
Three Persons	\$36,990	\$61,650	\$1,541.25
Four Persons	\$41,100	\$68,500	\$1,712.50
Five Persons	\$44,400	\$74,000	\$1,850.00

Effective 07/01/2014

Household Composition	<u>Net</u> Income of Twice the Required Rent / Annualized	<u>Gross</u> Monthly Income / Annualized as Determined by HUD and Published Annually	Monthly Rent
One Person	\$22,950	\$38,250	\$956.25
Two Persons	\$26,220	\$43,700	\$1,092.50
Three Persons	\$29,490	\$49,150	\$1,228.75
Four Persons	\$32,760	\$54,600	\$1,365.00
Five Persons	\$35,400	\$59,000	\$1,475.00

Effective 03/06/2015

Household Composition	<u>Net</u> Income of Twice the Required Rent / Annualized	<u>Gross</u> Monthly Income / Annualized as Determined by HUD and Published Annually	Monthly Rent
One Person	\$28,500	\$47,500	\$1,187.50
Two Persons	\$32,640	\$54,400	\$1,360.00
Three Persons	\$36,720	\$61,200	\$1,530.00
Four Persons	\$40,800	\$68,000	\$1,700.00
Five Persons	\$44,070	\$73,450	\$1,836.25

Effective 03/06/2015

EXHIBIT C
[Set-Aside Units and Rent Schedule]

EXHIBIT C

WHH Trice and Company - Mount Vernon Plaza

As of 12/12/2014

		Floor Plan		Unit Status	Name	Move In	Lease Start	Lease End
1	1-104	L2-2	905	Occupied	Viera, Efrain	11/16/2002	12/01/2013	11/30/2014
2	1-103	G2-2	865	Occupied	Beatty, Dominique	12/13/2008	01/01/2014	12/31/2014
3	1-202	D2-2	830	Occupied	Gebreselassie, Mulu	12/03/2010	01/01/2014	12/31/2014
4	1-225	B2-2	802	Occupied	Malase, Azeb	12/12/2009	01/01/2014	12/31/2014
5	1-309	W2-2	868	Occupied	Butler, Danielle	12/13/2003	01/01/2014	12/31/2014
6	1-719	D1-1	610	Occupied	Andrews, Quitel	12/13/2000	01/01/2014	12/31/2014
7	1-416	R2-2	925	Occupied-NTVL	Ghebremariam, Alem	12/01/1994	11/01/2013	10/31/2014
8	1-131	U2-2	846	Occupied	Jackson, Christine	02/01/1995	02/01/2014	01/31/2015
9	1-106	W2-2	868	Occupied	Akunwafor, Maureen	03/01/2010	03/01/2014	02/28/2015
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24	1-241	L2-2	905	Occupied	Belayhun, Zebene	06/22/2012	07/01/2014	06/30/2015
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29	1-519	D1-1	610	Occupied	Jordan, Gregory	08/01/2005	08/01/2014	07/31/2015
30	1-914	P2-2	975	Occupied	Pitroipa, Antoine	08/01/2012	08/01/2014	07/31/2015
31	1-T18	F1-1	625	Occupied	Powell, Edward M.	07/10/1993	08/01/2014	07/31/2015
32	1-308	K1-1	760	Occupied	Yemer, Lubaba	09/01/2011	09/01/2014	08/31/2015
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34	1-412	F2-2	868	Occupied	McClain, Twala	08/20/2010	09/01/2014	08/31/2015
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37	1-105	G2-2	865	Occupied	Berhe, Aster	11/01/2010	11/01/2014	10/31/2015
38	1-108	K1-1	760	Occupied	Merkebu, Endegen	10/26/2009	11/01/2014	10/31/2015
39	1-404	M2-2	905	Occupied	Assefa, Yilkal	11/01/2009	11/01/2014	10/31/2015
40	1-615	D1-1	610	Occupied	Pinckney, Tamika	10/11/2003	11/01/2014	10/31/2015
NTVL = Unit 1-416 Notice to vacate lease for unpaid rent								
1-103	G2-2				Beatty, Dominique - gave notice buying home with parents			

Exhibit C

(Form Deed)

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, is made as of the ___ day of _____, 2015 by THE DISTRICT OF COLUMBIA, a Municipal corporation (“**GRANTOR**”) to _____ (“**GRANTEE**”).

WITNESSETH, that in consideration of the sum of ____ Dollar (\$____) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee and its successors and assigns, in fee simple absolute, all of the right title and interest of the Grantor (and all those claiming by, through or under Grantor) in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, situate, lying and being in the District of Columbia, described as follows, to wit:

[ADD LEGAL DESCRIPTION]

SUBJECT to all easements, covenants and restrictions of record and in effect as of the date first above written.

AND said Grantor covenants that he has the right to convey to Grantee the above-described property, that Grantor will warranty specially said property, and that Grantor will execute such further assurances of said property as may be requisite.

[Remainder of Page Intentionally Blank. Signatures Appear on Following Page.]

Signature Page to Special Warranty Deed

GRANTOR

Approved for Legal Sufficiency:

DISTRICT OF COLUMBIA,
acting by and through the Department of
Housing and Community Development

By: _____
Name:
Title: General Counsel

By: _____
Name:
Title: Director

DISTRICT OF COLUMBIA)ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 2015 by _____ Director of the Department of Housing and Community Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia’s Department of Housing and Community Development, has executed the foregoing and annexed document as her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

GRANTOR: District of Columbia
Department of Housing and Community Development
1800 Martin Luther King, Jr., S.E.
Washington, D.C. 20020
Attn: General Counsel

GRANTEE: Mount Vernon Plaza Associates, L.L.P.
c/o Michele Z. Ball
4029 Ironbound Rd., Suite 100
Williamsburg, VA 23188

EXHIBIT D

(Memorandum of Rental Housing Preservation Agreement)

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Department of Housing and Community Development
1800 Martin Luther King Jr. Ave, SE
Washington, DC 20020
Attn: General Counsel

MEMORANDUM OF RENTAL HOUSING PRESERVATION AGREEMENT

This MEMORANDUM OF RENTAL HOUSING PRESERVATION AGREEMENT (this "Memorandum") is made and entered into as of _____, 2015 by and between Mount Vernon Plaza Associates, L.L.P., a District of Columbia limited liability partnership ("Developer") and the District of Columbia, acting by and through the Department of Housing and Community Development ("Department" or DHCD).

DHCD and Developer are parties to that certain Rental Housing Preservation Agreement dated December 15, 2014, as amended (the "Agreement"), relating to certain real property located at 930 M St., NW, Washington, DC 20001 (Sq. 0369, Lots 0068) (the "Property") and encumbered by that certain 250 unit apartment rental complex called Mount Vernon Plaza Apartments (the "Project") as more particularly described in **Exhibit A** attached hereto.

DHCD and Developer agree that pursuant to Section 3 of the Agreement, the Developer shall set aside 63 units in the Project to be leased to Low-Income and Very Low-Income households for a period to begin on January 1, 2015 through January 31, 2022 (the "Preservation Period"). DHCD and Developer desire to have this Memorandum recorded in the Land Records of the District of Columbia to put interested parties on notice of the Preservation Period.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above, by affixing their respective hands and seals hereunto.

WITNESS/ATTEST:

DEVELOPER

**MOUNT VERNON PLAZA
ASSOCIATES, L.L.P.**, a District of
Columbia limited liability partnership

Bush Construction Corporation,
a Virginia corporation,
the Managing General Partner

By: _____
Name: Mary Digges
Title: President

DEPARTMENT

DISTRICT OF COLUMBIA, a municipal
corporation, acting by and through the
**DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**

WITNESS/ATTEST:

By: _____(Seal)
Name: Mary R. (Polly) Donaldson
Title: Director

Approved as to Legal Sufficiency:

Date: _____

General Counsel for the Department of
Housing and Community Development

District of Columbia, ss:

I, _____, a Notary Public in and for the above jurisdiction, hereby certify that Mary R. Digges, President of Bush Construction Company, the Managing General Partner of Mount Vernon Plaza Associates, L.L.P. in the foregoing Memorandum, personally appeared before me in said jurisdiction and, being personally well known to me (or satisfactorily proven) to be the person named above, acknowledged said Memorandum to be the act and deed of the corporation, and that she delivered the same as such.

Witness my hand and official seal this _____ day of _____.

Notary Public

My Commission Expires
[Notarial Seal]

District of Columbia, ss:

I, _____, a Notary Public in and for the above jurisdiction, hereby certify that Mary R. (Polly) Donaldson, Director, of the Department of Housing and Community Development in the foregoing Certification bearing date the ___ day of _____, personally appeared before me in said jurisdiction and, being personally well known to me as the person named as the Attorney-in-Fact for the said Department of Housing and Community Development, acknowledged said Certification to be the act and deed of the District of Columbia, and that she delivered the same as such.

Witness my hand and official seal this _____ day of _____.

Notary Public

My Commission Expires
[Notarial Seal]