



CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED (“Easement”), granted by JUBILEE HOUSING, INC., a District of Columbia nonprofit corporation (“Grantor”), to Kalorama Citizens Association, a District of Columbia nonprofit corporation (“KCA” or “Grantee”), is effective on the date of its recordation by Grantee in the land records of the District of Columbia (“District”). This Easement also refers to Grantor and Grantee individually as “Party” and collectively as “Parties.”

RECITALS:

WHEREAS, Grantor is the owner in fee simple of the land and improvements in the District comprising 1800 Columbia Road, N.W., Washington, D.C. (“Property”), more particularly described in **Exhibit A**, which is attached and incorporated by reference; and

WHEREAS, Perpetual Federal Savings and Loan Association (“Perpetual”) first made available to the public in 1979 a plaza on the Property (“Existing Plaza”) that is about 4,095 square feet in area, is located within the property lines of the Property, and is more particularly described in **Exhibit B**, which is attached to this Easement and incorporated by reference; and

WHEREAS, Grantor has agreed to provide the Existing Plaza to the public and to do so pursuant to this Easement until it is replaced by a new plaza (“New Plaza”) or some other future plaza or plazas, each of which will also be provided to the public pursuant to this Easement; and

WHEREAS, the term “Plaza” refers to the Existing Plaza, the New Plaza, and any future plaza individually and the term “Plazas” refers to the Existing Plaza, New Plaza, and any future plaza collectively; as used in this Easement, the term “Plaza” refers to the Plaza that is in existence, is planned or in existence at the time of the application of the relevant provision of this Easement, or may be planned or in existence in the future; and

WHEREAS, Grantor has agreed to establish, provide, and maintain the New Plaza that will have an area of at least 4,095 square feet and be located within the property lines of the Property, more particularly described in **Exhibit C**, which is attached to this Easement and incorporated by reference, and to construct and provide an affordable housing project on the Property that will contain about fifty (50) affordable housing units, a basement parking garage, and a penthouse (“New Building”); and

WHEREAS, the Existing Plaza faces the intersection of Columbia Road, N.W., and 18th Street, N.W., occupies a place at the heart of the Adams Morgan neighborhood in the Northwest quadrant of Washington, D.C. (“Adams Morgan”), and provides a space that serves primarily as a space for open and free use by the public while serving secondarily as a vending space from time to time, most notably for a seasonal farmer’s market; and

WHEREAS, the New Plaza (and any future Plaza that replaces the New Plaza or is provided instead of the New Plaza (“Future Plaza”)) will also be located in the same location (*i.e.*, facing the intersection of Columbia Road, N.W., and 18th Street, N.W.,) and with the same configuration as the Existing Plaza, contain space of at least 4,095 square feet, occupy a place at the heart of Adams

Morgan, and provide a space that will serve primarily as a space for open and free use by the public and for performances and events while serving secondarily as a vending space from time to time; and

WHEREAS, each Plaza provided pursuant to this Easement is protected throughout its existence by this Easement, which is perpetual regardless of any replacement or updating of the Plaza or its components, and is to serve as a multipurpose space for open and free use by the public as provided in this Easement; and

WHEREAS, the Property is of great significance to the Adams Morgan community, for multiple reasons, including:

- The Knickerbocker Theater, one of the earliest movie theaters in the District, operated on that site from 1917 until 1922 when its roof collapsed during a major snow storm, killing 98 theatergoers and injuring another 150, visiting tragedy upon hundreds of theatergoers, inflicting immeasurable pain on the survivors of the disaster and the families of the victims, and leading to improvements in the District's building code; and
- The Knickerbocker Theater was rebuilt in 1923 and renamed the Ambassador Theater, initially serving as a movie theater and performance space (hosting music and other performances as well as political events) and serving as a dance hall for a short time before its demolition in 1969; and
- Perpetual secured a bank charter for the Property after entering into a mortgage lending practices agreement with community organizations in 1977 aimed at ending systematic redlining, which had been pervasive in Adams Morgan and had adversely impacted the quality of life in Adams Morgan and much of the District, and at providing new mortgage opportunities for low- and moderate-income residents of Adams Morgan to partially remedy the damage caused to the Adams Morgan community by systematic redlining; and
- Perpetual's mortgage lending practices agreement and data about redlining by Perpetual and other banks in Adams Morgan and other District neighborhoods played a central role in Congress' enactment of the Community Reinvestment Act in 1977 (Pub. L. No. 95-128; 12 U.S.C. §§ 2901-08), which was critically important in reducing and limiting redlining throughout the nation; and
- Perpetual constructed a three-story bank branch facility ("Existing Building") and the Existing Plaza on the Property in 1978 in accordance with a 1976 offer to the Adams Morgan community to provide the Plaza for public use, including for the sale of produce and other goods to the public, and opened the Existing Plaza to public use in March of 1979; and
- Plans to demolish the Existing Plaza in 2016 and remove a vital space for public use at the heart of Adams Morgan led to an eight (8) year legal battle in Kalorama Citizens Association v. SunTrust Bank Company, 2017-CA-004182-B, in the Superior Court of the District of Columbia ("Lawsuit"), initiated by KCA and Adams Morgan for Reasonable Development ("AM4RD") ("Plaintiffs"), to preserve the Existing Plaza and ensure recognition of the existence of the public's right to use the Existing Plaza via a longstanding easement by public dedication that culminated in establishment of this Easement and its recognition, confirmation, and application to

the Plazas as part of a settlement agreement among the parties to the Lawsuit (“Settlement Agreement”); and

WHEREAS, Grantee is a District nonprofit corporation that has been designated by Plaintiffs to serve as the holder of this Easement and as the entity with lead responsibility for preserving and protecting the public’s rights to use the Plazas; and

WHEREAS, Grantor grants this Easement to Grantee to: (i) establish and clarify Grantor’s obligation to provide, and Grantor’s and Grantee’s obligations to operate and maintain, the Existing Plaza during a transition period (defined as starting on the date of the Settlement Agreement and running until one (1) day before commencement of demolition of the Existing Building and Existing Plaza following issuance of a construction permit by the District government for construction of the New Plaza and New Building) (“Transition Period”), the New Plaza upon its completion, and any Future Plaza provided in place or instead of the New Plaza; (ii) establish and clarify Grantor’s obligation to provide, and Grantor’s and Grantee’s obligations to operate and maintain, the Plazas; (iii) establish and clarify the rights of members of the public to use the Plazas; and (iv) establish and define Grantor’s and Grantee’s respective rights to enforce this Easement; and

WHEREAS, the Property comprises a unique cultural and historical asset at the center of Adams Morgan, a portion of which will be preserved and maintained first as the Existing Plaza, then as the New Plaza, and possibly later as a Future Plaza, with the New Plaza and any Future Plaza to be provided in the same location and configuration and with at least the same size as the Existing Plaza to memorialize the history of the site and provide a space for open and free public use in perpetuity; and

WHEREAS, the District recognized the public value of privately-donated conservation easements such as the one established by this Easement by enacting the Uniform Conservation Easement Act of 1986, D.C. Code §§ 42-201 – 42-205 or any successor thereto (“UCEA”), which authorizes the establishment of easements to protect values such as those associated with the Plazas, including, “open-space values of real property,” to ensure the availability of real property for “recreational[] or open-space use,” and to preserve the “historical . . . or cultural aspects of real property” (“Conservation Values”); and

NOW THEREFORE, Grantor, in consideration of the premises contained in this Easement and of Ten Dollars (\$10.00) paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, and intending to legally bind itself and its successors and assignees, grants and conveys to Grantee and its successors and assignees an easement for the public to use the Plazas as set forth in this Easement and as authorized by the UCEA.

Article 1 Plaza Purposes and Uses

(a) General Purposes. Grantor grants this Easement to Grantee to provide the Plaza as a multipurpose space to be used primarily as a space for open and free use by the public and for performances and events and secondarily as a vending space; provided that such vending use does

not impair the ability of the public to use the Plaza as provided in this Article 1 and subject to the terms and conditions of this Easement.

(b) Grantor's Plaza Obligations

(i) Grantor shall provide and maintain the Existing Plaza for open and free use by the public from the date of the Settlement Agreement until it is no longer feasible as a result of express permitting conditions or requirements that preclude such use or commencement of demolition of the Existing Building and Existing Plaza following issuance of a construction permit by the District government for construction of the New Plaza and New Building or as otherwise provided in this Easement.

(ii) Grantor shall construct the New Plaza in accordance with the plans and renderings set forth in **Exhibit C**, with no direct openings from the New Building onto the Plaza other than those provided in such exhibit or pursuant to agreed-upon modifications to those plans and renderings. Further, Grantor shall construct both the New Plaza and New Building in generally the same time period, place the New Plaza and New Building in service within the same time period to the maximum extent possible, and treat the New Plaza and New Building as interconnected parts of a single unified project throughout the construction process. Notwithstanding the foregoing, Grantor is fully obligated to secure and provide full financing for construction of the New Plaza and agrees to complete construction and placement in service of the New Plaza as expeditiously as possible even if there are small differences in the schedule for completing the construction of the New Plaza and the New Building due to exigencies of the construction or permitting process that are not within Grantor's control.

(iii) Grantor shall open the New Plaza for use by the public at the same time as it opens the New Building for use and commence implementation of its obligations with regard to the New Plaza as required by this Easement at the same time.

(iv) If Grantor starts the construction process but is unable to complete construction of the New Building within a reasonable time period for financing or other reasons, Grantor shall promptly clean up and secure the construction site, immediately restore the Existing Plaza to service, and obtain Grantee's approval for any design modifications that may be necessary to accommodate changes made to the Existing Plaza during the construction process; provided that such approval is not unreasonably withheld or delayed and the design modifications are consistent with the objectives of this Easement.

(v) If Grantor is unable to secure financing for the New Plaza or New Building or is prevented from constructing the New Plaza or New Building by circumstances beyond its control (*e.g.*, a natural or manmade disaster), it shall continue to provide the Existing Plaza as set forth in this Easement, subject to improvements as may be agreed to by Grantee, provided that such improvements do not reduce the size, or alter the location and configuration, of the space occupied by the Existing Plaza and shall not replace the Existing Plaza unless it is irreversibly damaged by circumstances beyond its control or is removed by agreement with Grantee and replaced by a Future Plaza in the same location and configuration and with at least the same size as the Existing Plaza and in accordance with designs and plans approved by Grantee.

(c) Grantor's Maintenance and Upgrade Obligations. Grantor shall, at its sole expense (but may also use revenues from vending fees for use of the Plazas to cover some or all of its costs), provide and maintain the Plazas, and, from time to time, upgrade the New Plaza and any Future Plaza and all necessary equipment and facilities for the uses described in Article 1(a). Grantor's obligations with respect to the New Plaza include providing and maintaining the tables and benches, umbrellas, kiosks, vendor tents, and a stage for performances and other events as set forth in **Exhibit D** (Plaza Designs and Operation) and updating all such items following consultations with Grantee as needed or at least once every twelve (12) months. Grantor shall upgrade the Plaza and replace Plaza equipment and facilities as may be necessary after consultations with Grantee that take into account such essential matters as the availability of funding for the upgrade or replacement and both a reasonable schedule and the need for the upgrades and replacements; provided that Grantor proposes a plan and schedule for securing the necessary funding and implementing the improvements that is satisfactory to Grantee. Grantor shall regularly clean, maintain, and repair the Plazas and their equipment and facilities (subject to rules that may be established pursuant to Article 1(e) or (f) that may require vendors and other Plaza users to clean up after using the Plaza) and shall provide storage space for the New Plaza equipment and facilities adjacent to, and directly and readily accessible from, the New Plaza on the first floor of the New Building. Grantor shall restore or repair damage to a feature or element of the Plaza as may be necessary after consultations with Grantee that take into account such essential matters as the availability of funding for the restoration or repair work and both a reasonable schedule and the need for the repair or restoration; provided that Grantor proposes a plan and schedule for securing the necessary funding and implementing the repair or restoration work that is satisfactory to Grantee.

(d) Grantee's Right to Augment the New Plaza's Equipment and Facilities. Grantee is entitled to augment the equipment and facilities required by **Exhibit D** by providing items that Grantor is not required to provide by this Easement and by deploying such items on the New Plaza; provided that it obtains Grantor's prior consent, which Grantor shall not unreasonably withhold.

(e) General Plaza Policies

(i) Following consultation with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, Grantor may establish general policies for use of the Plaza and public health and safety rules, including rules designed to protect the safety and well-being of the public and quiet enjoyment of their residences by residents of the New Building and residents of the residential properties in the immediate neighborhood. In establishing these policies, Grantor shall maximize open and free use of the Plaza by the public (including unscheduled uses by members of the public as provided in Article 1(h)), limit the Plaza space and time that is assigned to vending use as provided in Article 1(f)(ii), and not interfere with Grantee's management of performances and other events on the Plaza under Article 1(g).

(ii) Grantor shall not limit or regulate speech on the Plaza or interfere with spontaneous or unscheduled activities by members of the public on the Plaza, but may establish and enforce rules pursuant to Article 1(e)(i) that are designed to protect the safety and well-being of the public and quiet enjoyment of their residences by residents of the New Building and residents of residential properties in the immediate neighborhood and that do not involve limits on or, regulations of the, content of speech.

(iii) Noise levels on the Plaza shall be subject to, and regulated in accordance with, District noise regulations (20 D.C.M.R. §§ 2700-99 or any successor thereto).

(iv) Following consultation with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, Grantor may enforce rules and requirements established pursuant to this Article 1(e) and may suspend vending opportunities for violations of established and disclosed vending rules.

(v) Grantor shall implement measures as it deems appropriate to limit threats to public safety on the Plaza but shall not have primary responsibility for enforcing policies that are the Grantee's primary responsibility (*e.g.*, policies established pursuant to Article 1(g)) or for enforcing laws governing criminal activity or preventing violations of criminal laws, including laws governing acts or threats of terrorism or other acts involving actual or possible violence or use of weapons, explosives, or vehicles.

(vi) Following consultation with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, Grantor shall review and update all such general policies at least once every twelve (12) months to ensure that the Plaza is effectively fulfilling the purposes of this Easement, including providing the public with open and free access to the Plaza.

(f) Vending Uses of the Plaza

(i) Grantor, unless the Parties agree otherwise, has lead responsibility for managing use of the Plaza by vendors, enforcing public health and safety rules applicable to vendors, and coordinating with Grantee regarding allocating time and space on the Plaza to vending and non-vending uses and scheduling events on the Plaza (*e.g.*, vending, performances and other events) to avoid scheduling conflicts, subject to the general policies established by, or pursuant to, Article 1(e). Among other things, Grantor may charge reasonable application and rental fees for use of vending space on the Plaza and vending facilities and equipment ("Vending Fees"); provided that such Vending Fees have been disclosed to, and reviewed by, Grantee prior to implementation. Grantor shall generally apply Vending Fees on a nondiscriminatory basis to all vendors but will exempt vendors who supply their own vending equipment and facilities from the portion of the Vending Fee that represents the costs of renting vending equipment and facilities. Notwithstanding the foregoing requirement for nondiscriminatory Vending Fees, Grantor shall establish a sliding fee scale for Vending Fees that reduces barriers to access for first-time and limited vendors, while, in the aggregate, generating enough revenue to fund Plaza operations and the Grantor's other obligations under this Easement with respect to the Plaza. Grantor shall also establish and implement a program for first-time vendors that exempts them from Vending Fees for an initial trial or introductory period of at least six (6) month. Further, Grantor shall establish and implement an application and approval process for first-time vendors and limited vendors that fosters their participation in vending by minimizing the review process and other procedural requirements and other barriers to entry. Grantor shall also provide technical assistance to first-time and limited vendors as may be reasonably necessary to their successful participation in vending on the Plaza. For purposes of this Article 1(f)(i), the term "first-time vendor" means a vendor who has little or no prior experience in making commercial sales to members of the public and the term "limited vendor" means a vendor who sells a small or limited number of items and charges fees for each item that

are roughly equal to or less than its value. Following consultation with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, Grantor shall review and update all such vending policies at least once every twelve (12) months to ensure that the Plaza is effectively serving the public and providing the public with access to vending opportunities and that the impact of vending on open and free use of the Plaza by the public is minimized.

(ii) Grantor's role in licensing vendors consists primarily of managing competition for limited vending space and time, approving vendor applications, publicly disclosing available vending space and schedules, enforcing public health and safety rules, and generating Vending Fee revenues for Plaza operations and maintenance. Further, Grantor shall limit vending space and time as necessary to ensure the availability of space and time on the Plaza for open and free use by the public and for performances and other events. The establishment of reasonable limits on vending space and time is intended to prioritize open and free use of the Plaza by the public while also allowing for vending activities that support a vibrant Plaza such as small-scale sales of food or non-alcoholic beverages and for periodic or occasional use of the Plaza for major vending activities such as a farmer's market. Grantor may establish and manage a publicly accessible reservation system for booking vending space that relies primarily on first-come, first-served practices but may also include measures such as restrictions on multiple bookings by the same vendor to ensure open and fair access to the Plaza for vending opportunities.

(iii) Grantor shall use Vending Fee revenues to support Plaza operations and maintenance or as may otherwise be agreed to by Grantor and Grantee. Grantor shall not apply preferential standards or requirements to its own vendors or vendors owned or controlled by it either directly or indirectly through an affiliate or other entity related to, or controlled by, Grantor ("Affiliated Vendors") except that Grantor may exempt itself and Affiliated Vendors from Vending Fees and shall not deny an unaffiliated vendor the ability to rent vending space unless the space available for vending use has been fully allocated to vendors with firm commitments to use the space. Subject to inclusion in applicable booking procedures, Grantor may accommodate Jubilee Farms with preferential access to additional vending opportunities and times; provided that implementation of that preferential access policy does not interfere with, or intrude on, other activities or events on the Plaza.

(iv) Following consultation with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, Grantor shall review and update its vending policies at least once every twelve (12) months with a goal of balancing public safety and equitable vending opportunities while maximizing open and free use of the Plaza by the public.

(g) Non-vending Uses of the Plaza

(i) Notwithstanding Articles 1(e) and (f), Grantee, unless the Parties agree otherwise, has lead responsibility for establishing policies for use of the Plaza for performances and other events, including use of the stage ("Non-vending Uses of the Plaza"), and coordinating with Grantor regarding allocating time and space on the Plaza to vending and non-vending uses and scheduling events on the Plaza (*e.g.*, vending, performances, other events) to avoid scheduling conflicts. Following consultation with Grantor, and with the approval of, Grantor, which approval shall not be unreasonably withheld, Grantee shall review and update all such policies at least once

every twelve (12) months to ensure that Non-vending Uses of the Plaza are effectively serving the public.

(ii) Grantee may charge application and usage fees for Non-vending Uses of the Plaza (“Event Fees”), provided that such Event Fees have been disclosed to and reviewed by Grantor prior to implementation. Grantee shall use Event Fee revenues to support Non-vending Uses of the Plaza and to purchase equipment for Non-vending Uses of the Plaza or as may be otherwise agreed to by Grantor and Grantee. Grantee may establish and manage a publicly accessible reservation system for scheduling stage and Plaza performances and other events that relies primarily on first-come, first-served practices but may also restrict multiple bookings by the same user of the stage or the Plaza to ensure open and fair access to the stage or the Plaza for all potential users.

(iii) Grantee shall implement measures as it deems appropriate to limit threats to public safety during non-vending uses of the Plaza for which it has scheduled activities but shall not have primary responsibility for enforcing policies that are the Grantor’s primary responsibility (e.g., general Plaza policies established pursuant to Article 1(e) and policies governing vending established pursuant to Article 1(f)) or for enforcing laws governing criminal activity or preventing violations of criminal laws, including laws governing acts or threats of terrorism or other acts involving actual or possible violence or use of weapons, explosives, or vehicles.

(h) **Unscheduled Uses of the Plaza.** The Plaza will be available for spontaneous or unscheduled use by members of the public to the maximum extent possible, provided that the activity does not interfere with scheduled vending, performances, and other events. In connection with this obligation, Grantee shall encourage and support unscheduled use of the Plaza and the stage for spontaneous or unscheduled uses during any period where either or both spaces have not been booked for scheduled performances or other events or vending activities.

(i) **Facilities and Equipment for New Plaza.** Grantor will have lead responsibility for setting up, arranging, removing, and storing facilities and equipment for use by vendors and the public on the New Plaza and any Future Plaza. Grantor shall establish policies regarding setting up, arranging, removing, and storing such facilities and equipment following consultations with, and with the approval of, Grantee, which approval shall not be unreasonably withheld, and has ultimate responsibility for fulfilling these responsibilities in accordance with such policies.

(j) **Grantor’s and Grantee’s Right to Use the New Plaza.** Nothing in this Article will be construed to limit the right of Grantor or Grantee to use the Plaza or the stage pursuant to this Article, provided it does so in accordance with the applicable rules and other requirements established pursuant to this Article.

(k) **Existing Plaza Uses during the Transition Period.** Policies for use of the Existing Plaza during the Transition Period will generally be consistent with the policies set forth in Articles 1(e) and (f) to the extent practical but will also take into account the needs of the occupants of the Existing Building, the transitional nature of these policies, and the need for flexibility in applying them during a period when use of the Existing Plaza may be in a state of flux and interest in vending may be limited. Grantee will have lead responsibility for managing Non-vending Uses of the Plaza, including use of the Existing Plaza’s stage, as provided in Article 1(g) and consistent with the

requirements of Articles 1(e) and (f), for performances and other events during the Transition Period. In light of the fact that the only stage on the Existing Plaza is the area immediately in front of the Plaza-facing entrance to the Existing Building, no performance on the stage of the Existing Building may be scheduled during normal business hours (between 8:00 am and 6:00 pm on Monday through Friday) if the Existing Building is occupied and in use without the approval of Grantor, which shall not be unreasonably withheld or delayed.

(l) Grantor and Grantee Enforcement Rights. Grantor will have exclusive authority to enforce all Grantee's obligations pursuant to this Easement and Grantee will have exclusive authority to enforce all Grantor's obligations pursuant to this Easement except as otherwise provided by the Settlement Agreement, provided that each Party, as applicable, provides prior written notice to the other Party of its intention to file an enforcement action as specified in Article 6.

(m) Perpetual Obligation. Grantor acknowledges that its obligation to provide a Plaza of at least 4,095 square feet that is located within the property lines of the Property and in the same location and with the same configuration as the Existing Plaza is perpetual. This perpetual obligation will continue in effect even if Grantor fails to provide the New Plaza and the New Building due to an inability to secure financing for the New Building and New Plaza or to other circumstances beyond its control (*e.g.*, a natural or manmade disaster) and may be met by continuing to provide the Existing Plaza or by providing a Future Plaza if a different building is provided in lieu of the New Building or the New Plaza is removed with the consent of Grantee, provided that the Existing Plaza is expeditiously replaced by a Future Plaza, subject to Grantee approval of the design and plans for any Future Plaza and application of the requirements of this Easement to any such Plaza, including the requirement that any Future Plaza be in the same location and configuration and with at least the same size as the Existing Plaza.

(n) Reservation of Grantor's Rights. Notwithstanding Article 1(l), Grantor reserves all rights accruing from its ownership of the Property for itself and its assignees and successors that are not expressly prohibited or limited by this Easement or are not inconsistent with the Conservation Values. The Parties have defined their respective rights and obligations in good faith, attempting to appropriately address foreseeable future events. If, at some point, for safety reasons, Grantor wishes to propose new safety-related provisions for incorporation into this Easement, it may do so by seeking approval of an amendment to the Easement pursuant to Article 7(a). Alternatively, Grantor and Grantee may propose to the other Party changes in any of the policies and guidelines that have been agreed to between Grantor and Grantee pursuant to this Article 1 and may implement such changes; provided they have been agreed to by both Parties.

Article 2

Nature and Effect of the Easement

(a) Nature of Easement. This Easement constitutes a real property interest that is vested in Grantee upon its effective date and is granted to Grantee in perpetuity. The Easement and the rights granted or created under it are appurtenances to the Property, and neither this Easement nor any such right may be transferred, assigned, or encumbered except as an appurtenance to such Property and as provided in this Easement.

(b) Beneficiaries and Burdens of Easement. Each restriction, condition, or provision contained in this Easement: (i) is made for the direct benefit of Grantee in its capacity as a representative of the public; (ii) creates an equitable servitude on the Property; (iii) constitutes a covenant running with the land; (iv) binds every person having any fee, leasehold, or other interest in the Property or any portion thereof; and (v) inures to the benefit of Grantee and its respective successors and assignees in their capacity as representatives of the public.

Article 3 Restrictions and Prohibitions of the Easement

(a) Subdivision. Subject to Article 7(a), Grantor may subdivide the Property by separating ownership of the portion of the Property containing the Plaza from the Property to the extent necessary to secure and structure financing for interim and long-term uses to satisfy its lenders and investors; provided the Easement continues to fully encumber the Plaza and the portion of the Property containing the Plaza is not divided or subdivided.

(b) Structures. Except as provided by **Exhibit C** or **Exhibit D** or as agreed to by the Parties, neither Grantor nor Grantee shall erect, replace, or expand any permanent structure on the Plaza without prior written notice to the other Party and the other Party's prior written approval, but such approval may be granted only if such structure does not interfere with use of the Plaza by the public or infringe the Conservation Values or other purposes underlying this Easement.

(c) Signs. Grantor shall not install, post, or display any sign, outdoor advertising, or billboard on the Plaza without prior written notice to, and Grantee's prior written approval. Notwithstanding the foregoing, this Easement does not limit or restrict Grantor's right to install any sign, outdoor advertising, or billboard (to the extent permitted by applicable law) on any part of the Property that is not within the boundaries of the Plaza, as specified in **Exhibit B** and **Exhibit C**, except for on the first two floors of the portion of the façade of the New Building that faces the New Plaza.

(d) Trees, Plantings, and Vegetation. Grantor shall maintain all trees, plantings, and vegetation on the Existing Plaza during the Transition Period and on or adjacent to the New Plaza that are required by or pursuant to **Exhibit D** by regularly caring for such trees, plantings, and vegetation and by promptly replacing dead, unhealthy, or damaged trees, plantings, or vegetation. Grantor shall establish and implement a regular rodent and pest control and abatement program for the Plaza that minimizes the presence of rodents and pests on the Plaza. Grantor may not remove a tree that is not dead, unhealthy, or damaged without the prior approval of Grantee unless the tree poses an immediate danger to the Property, neighbors of the Property, or users of the Plaza. In the case of such an immediate danger, Grantor may take immediate measures to remedy any such danger; provided that Grantor provides Grantee with immediate written notice of any such remedial measure and provides a written explanation of the reasons for any such remedial measure no later than three (3) Calendar Days following such action. Grantee may not remove or alter a tree that is not dead, unhealthy, or damaged without the prior approval of Grantor, which approval shall not be unreasonably withheld.

(e) Motor Vehicles. Neither Grantor nor Grantee shall drive, park, or store any motor vehicles on the Plaza without prior written notice to the other Party and the other Party's prior written approval except for occasional, short-term parking of vehicles in connection with performing improvements or

other activities associated with maintaining, repairing, or operating the Plaza, including setting up or taking down vending or event equipment, facilities, and items by a vendor or event user.

(f) Surface Topography. Neither Grantor nor Grantee shall alter the surface topography of the Plaza, including removing or altering any retaining walls associated with the Plaza or excavating, removing, or adding to, any surface material, soil, or other material, without prior written notice to the other Party and the other Party's prior written approval, which approval shall not be unreasonably withheld, except that such restrictions shall not affect or limit Grantor's ability to undertake routine maintenance and repair of the Plaza as necessary or make alterations required to comply with relevant legal requirements.

(g) Unobstructed Views. Except as authorized or permitted by this Easement or with Grantee's written approval, Grantor shall not obstruct or limit the ability of the public to view the Plaza from adjacent and nearby streets and sidewalks.

Article 4 Grantor's Responsibilities and Duties

(a) Costs and Liabilities. Grantor is responsible, and shall bear and assume liability, for all costs associated with, or relating to, ownership, operation, and maintenance of the Plaza, including obtaining and maintaining liability insurance and paying any taxes associated with the Property or Plaza except for taxes owed by vendors and other persons who are not affiliated with Grantor and make use of the Plaza for taxable activities. Grantor is solely responsible for obtaining and complying with all applicable governmental permits and approvals for any construction or activity or use associated with the Plaza except for permits and approvals that may be required by the District government for use of the Plaza by any user other than Grantor. Grantor shall take all necessary measures to prevent the encumbering of the Plaza by a lien for any work performed by or at Grantor's direction on the Plaza or the Property. Grantee shall not perform any construction work on the Plaza except as is agreed to by Grantor but this restriction does not apply to the erection of temporary structures on the stage or on the Plaza in connection with performances or other events or actions taken pursuant to Article 6(c)(iii)(a).

(b) Compliance with Applicable Building and Similar Codes and State-of-the-art Building and Design Standards:

(i) In constructing and maintaining the Plaza, the New Building, and any Future Plaza or building on the Property, Grantor shall comply in full with all applicable building and similar codes and with state-of-the-art construction and design standards and practices (*i.e.*, standards and practices that ensure energy efficiency, sustainability, resilience, protections against fires, resistance to seismic forces, and protection against weather events and natural disasters).

(ii) Grantor shall promptly remedy any violation of any applicable building or similar code, including, but not limited to, all applicable construction codes, as adopted and periodically updated pursuant to D.C. Code §§ 6-1401 – 6-1413, or any successor thereto, and D.C. Code §§ 6-801 – 6-808 (unsafe structures) and 6-901 – 6-919 (inhabitable or insanitary building conditions), or any successor thereto.

(iii) Notwithstanding Articles 7(b) and 8(e), Grantor and Grantee shall oppose any attempt, proposal, or initiative by any governmental entity to take the Property or extinguish the Easement, whether by condemnation, eminent domain, or any other governmental proceeding.

(c) Representations and Warranties. Grantor represents and warrants, to Grantor's knowledge, that:

(i) No substance or material that is defined or classified as hazardous, toxic, or polluting by or pursuant to federal or District law or otherwise recognized as harmful to human health or the environment ("Hazardous Substance") exists in or on the Plaza or will exist on the Plaza or has been or will be released, stored, or used on the Plaza.

(ii) No underground storage tank exists on the Plaza (to the best of Grantor's knowledge following reasonable due diligence) and none is or will be located on or below the Plaza, whether presently in service or abandoned or discontinued.

(iii) Upon approval of the Settlement Agreement, Grantor will be in compliance with all federal and District laws applicable to the Plaza.

(iv) No litigation relating to, or affecting, the Plaza is pending or threatened other than the Lawsuit in the Superior Court of the District of Columbia ("Superior Court"), which the parties to that Lawsuit have agreed to dismiss in the Settlement Agreement. To the best knowledge of both Parties, no civil or criminal proceeding is pending or threatened arising out of any violation of any federal or District law applicable to the Plaza.

(d) Remediation. Grantor shall not (and shall not permit its contractors, agents, or permittees to) engage in actions which would result in, involve, or cause a release of Hazardous Substances. If, at any time, a Hazardous Substance is released on the Property, Grantor shall promptly act to contain and remediate the Hazardous Substance and take action for any clean-up that may be necessary.

Article 5

Easement Assignments and Transfers and Assignments, Transfers, and Terminations of Grantor or Grantee Rights, Privileges, and Obligations

(a) Easement Assignment or Transfer by Grantee; Assignment, Transfer, or Termination of Grantee's Rights, Privileges, and Obligations. Neither Grantee nor Grantor shall effectuate or require an assignment or transfer of this Easement by Grantee or an assignment, transfer, or termination of Grantee's rights, privileges, and obligations under this Easement except as provided in this Article 5(a) or Article 6(e).

(i) Grantee may be required to assign this Easement and the rights, privileges, and obligations established by this Easement to a substitute Grantee only upon dissolution as such term is defined in this Article 5(a)(i). For purposes of Article 5, the term dissolution means the dissolution of an entity pursuant to D.C. Code § 29-106.02, except that an administrative dissolution will not be construed to be in effect if the entity has been reinstated pursuant to D.C. Code §§ 29-106.03 or 29-

106.04, a reinstatement request is pending before the District government or a court of competent jurisdiction, or the time period for filing such a reinstatement request has not expired pursuant to applicable law (“Dissolution”).

(ii) Grantee may assign this Easement and all rights, privileges, and obligations established by this Easement to a substitute Grantee only as provided in an agreement between Grantor and Grantee in the case of an assignment without Dissolution. An assignment without Dissolution will be construed to take effect under this Article 5(a) only if at least seventy-five (75) percent of the members of the dissolving Party’s board of directors in office voted in favor of the assignment (with whether the seventy-five (75) percent threshold has been reached measured by rounding up the number of required votes to the nearest whole number (*e.g.*, 75% of 9 directors in office = 6.75 for a minimum required vote in favor of assignment of 7 directors)) and the substitute Grantee has committed in writing to full compliance with all provisions of this Easement, including its various supermajority requirements.

(iii) An assignee or successor of Grantee may become a substitute Grantee under this Article 5(a) only pursuant to a written instrument recorded in the land records of the District that is: (a) signed by Grantor, the assigning Grantee, and the substitute Grantee; (b) in the case of a Dissolution, includes evidence of the Dissolution of the assigning Grantee and the right of the substitute Grantee to be named as a successor; and (c) in the case of an assignment without Dissolution, includes evidence from official Grantee records showing that at least seventy-five (75) percent of the members of Grantee’s board of directors in office voted in favor of the assignment (with whether the seventy-five (75) percent threshold has been reached measured by rounding up the number of required votes to the nearest whole number).

(iv) Grantee shall provide Grantor with written notice and a copy of the instrument by which an assignment, sale, or transfer of the Easement was made by no later than three (3) Calendar Days following effectuation of any such assignment, sale, or transfer. An inadvertent failure by Grantee to provide the notice required by this Article 5(a)(iv) will not be deemed to constitute a material violation of the Easement if Grantor confirms that it became aware of such assignment, sale, or transfer by other means.

(v) Immediately upon effectuation of the assignment to a substitute Grantee, the assigning Grantee will have no further rights under this Easement.

(b) Easement Assignment or Transfer by Grantor; Assignment, Transfer, or Termination of Grantor’s Rights, Privileges, and Obligations. Neither Grantee nor Grantor shall effectuate or require an assignment or transfer of this Easement by Grantor or an assignment, transfer, or termination of Grantor’s rights, privileges, and obligations under this Easement except as provided in this Article 5(b).

(i) Grantor may be required to assign this Easement and the rights, privileges, and obligations established by this Easement to a substitute Grantor only upon Dissolution.

(ii) Grantor may assign this Easement and all rights, privileges, and obligations established by this Easement to a substitute Grantor only as provided in an agreement between Grantor and Grantee in the case of an assignment without Dissolution.

(iii) An assignee or successor of Grantor may become a substitute Grantor under this Article 5(b) only pursuant to a written instrument recorded in the land records of the District that is: (a) signed by Grantee, the assigning Grantor, and the substitute Grantor; (b) in the case of a Dissolution, includes evidence of the Dissolution of the assigning Grantor, the right of the substitute Grantor to be named as a successor; and (c) in the case of an assignment without Dissolution, includes evidence from official Grantor records showing that the assignment has been approved in accordance with applicable procedures of Grantor.

(iv) Grantor shall provide Grantee with written notice and a copy of the instrument by which an assignment, sale, or transfer of the Property was made by no later than three (3) Calendar Days following effectuation of any such assignment, sale, or transfer. An inadvertent failure by Grantor to provide the notice required by this Article 5(b)(iv) will not be deemed to constitute a material violation of the Easement if Grantee confirms that it became aware of such assignment, sale, or transfer by other means.

(v) Immediately upon effectuation of the assignment to a substitute Grantor, the assigning Grantor will have no further rights under this Easement.

Article 6

Easement Enforcement and Administration

(a) Notice and Approval. Grantor shall provide prior written notice to Grantee and obtain Grantee's prior written approval before undertaking any activities that are restricted or prohibited by Article 3 as provided in this Article 6. The purposes of requiring such prior notice and approval include providing Grantee with the time and information necessary to monitor any such activity and prohibit Grantor from undertaking any such activity that will, in the sole judgment of Grantee, be inconsistent with the core requirements of this Easement or compromise or impair the Conservation Values.

(i) In any case where prior notice and approval are required pursuant to this Article 6(a), Grantor shall notify Grantee in writing at least ten (10) Calendar Days prior to the date on which Grantor is seeking approval to undertake the prohibited or restricted activity. The notice will describe the nature and location of the proposed activity, including sufficient detail describing the activity for Grantee to make an informed judgment as to whether the activity is consistent with the core requirements of this Easement and the Conservation Values. However, in the event of the need for an emergency repair, Grantor may proceed to commence the necessary repair work without prior notice and approval but shall provide notice to Grantee no later than twenty-four (24) hours after commencement of the repair work and secure Grantee's approval as soon as possible after such notice.

(ii) Grantee shall respond no later than ten (10) Calendar Days following receipt of notice under Article 6(a) by approving or disapproving the request or by requesting additional information to clarify the request. If Grantee fails to respond in some form within fourteen (14) Calendar

Days of receipt of notice under Article 6(a), the request for approval shall be deemed granted. Grantee may impose conditions on any proposed activity, including the right to monitor the activity or to inspect it. Grantee may withhold approval for the proposed activity if, in Grantee's sole judgment, it would impair or compromise the core requirements of this Easement or the Conservation Values. However, in the event of the need for an emergency repair, Grantee shall respond within twenty-four (24) hours.

(iii) A Party will be deemed to have been provided notice in accordance with this Article 6(a) and any other provision of this Easement requiring written notice only if the notifying Party provides written evidence of its receipt by the other Party.

(b) Enforcement Authority. This Easement requires Grantor and Grantee to do and to refrain from doing certain things and establishes rights for, and imposes obligations on, each Party. Each Party has sole authority to enforce against the other Party such rights or obligations. This authority includes authority for Grantee to preserve and protect any Conservation Values, enforce any provision of this Easement, prohibit or restrict any activity prohibited or restricted by this Easement, and require the immediate restoration of any feature of the Plaza that is damaged by any action or inaction by Grantor.

(c) Remedies.

(i) Notice of Violation. If either Party finds that a violation of this Easement has occurred or is likely to occur, that Party shall provide written notice to the other Party of such violation and request action by the other Party to cure the violation.

(ii) Informal Dispute Resolution. If a disagreement, claim, or dispute arises between Grantor and Grantee or between Grantor and a third party that is pursuant to, or concerning, any provision of this Easement ("Dispute"), Grantor and Grantee shall attempt to resolve any such Dispute pursuant to a mutually agreed-upon method. If either Grantor or Grantee concludes that the Dispute cannot be resolved through a mutually agreed-upon method, either Party may choose one of the formal dispute resolution methods described in Article 6(c)(iii) but may only utilize one method at a time.

(iii) Formal Dispute Resolution.

(a) Self-Help. If, following the provision of ten (10) Calendar Days' prior written notice by Grantee to Grantor requesting that Grantor remedy a violation of Article 1(b) or (c) relating to cleaning, maintaining, repairing, or upgrading the equipment and facilities of the Plaza, Grantor fails to remedy the violation or enter into a written agreement with Grantee establishing an agreed-upon plan and schedule to remedy the violation or provide an alternative written proposal, Grantee may act to correct the violation as it deems appropriate and seek reimbursement for the full costs of correcting the violation from Grantor. If Grantor and Grantee cannot reach an agreement on the need for the repair work or the reasonableness of the reimbursable costs, either Party may resort to one of the dispute resolution methods

provided by this Paragraph to determine whether the repair work was necessary and/or whether the reimbursable costs are reasonable.

(b) Arbitration. The Parties may agree to submit the Dispute to binding arbitration in accordance with the Rules of Arbitration of the American Arbitration Association that are in effect on the date of submission of the Dispute to arbitration, with the arbitration to take place in the District, to be subject to any applicable District statutes, to be conducted by a single arbitrator chosen jointly by the Parties with the objective of ensuring that arbitration provides a cost-effective process for both Parties, and to be subject to the expedited procedures option if eligible. The arbitrator has the authority to appoint experts such as an architect, engineer, or financial specialist as he or she deems necessary to resolve the Dispute. The arbitrator has authority to grant any remedy as he or she deems appropriate in light of the provisions of this Easement, with that remedy to be binding on all Parties, and to require the costs of the arbitration to be borne by the Parties as the arbitrator deems just and equitable except as may be otherwise provided pursuant to Article 6(c)(iv).

(c) Court Action. If, following the provision of notice pursuant to Article 6(a) or (c)(i), the noticed Party fails to cure a violation of this Easement or to begin the work of curing such a violation by no later than twenty (20) Calendar Days following receipt of such notice, the complaining Party is entitled to bring an action in equity or at law in a court of competent jurisdiction in the District to enforce this Easement, including to recover damages to Conservation Values, and remedy a violation of the Easement by seeking declaratory relief, injunctive relief, and monetary damages. Grantor and Grantee agree that the remedies at law for a violation of this Easement may not be adequate to protect the complaining Party's interest in this Easement and in preserving the Conservation Values and that the complaining Party is entitled to obtain injunctive relief without proving actual damages or the inadequacy or ineffectiveness of other legal remedies. For purposes of this provision, "to begin the work of curing" an Easement violation will be construed to mean that the noticed Party has taken concrete and documented steps such as hiring a contractor or architect and provided documentary evidence to the complaining Party that it has done so.

(iv) Indemnification. In connection with any duty or responsibility to a third party that a Party ("First Party") has undertaken or is subject to pursuant to this Easement or applicable law, the First Party shall defend, hold harmless, and indemnify the other Party for any liability or claim by a third party arising from or connected with and caused by a breach or violation of this Easement or applicable law by the First Party, including, but not limited to, personal injury (including death) or damage to personal belongings and other items occurring on the Plaza or Property to the extent that such injury was caused by the First Party. In the event that the Parties cannot agree that indemnification is required pursuant to this Paragraph, a court or arbitrator, as applicable, shall make that determination. Additionally, should a court or an arbitrator determine that the Parties are joint tortfeasors and are jointly and severally liable for any injury or damages suffered by a third party, the court or arbitrator shall apportion liability between those Parties (but not as to the claimant, to whom they shall remain jointly and severally liable) pursuant to the doctrine of

comparative negligence. That apportionment of liability between the Parties shall be made pursuant to this Easement, notwithstanding the fact that the District of Columbia is not a comparative negligence jurisdiction. **THE LIABILITY OF A PARTY UNDER THIS INDEMNIFICATION PROVISION SHALL NOT EXCEED THE LESSER OF THE TOTAL AMOUNT PAYABLE TO THE THIRD PARTY PURSUANT TO THIS INDEMNIFICATION PROVISION OR FIVE HUNDRED THOUSAND DOLLARS (\$500,000) PER OCCURRENCE.**

(v) Enforcement Costs. Grantor and Grantee shall each bear fifty percent (50%) or such other percentage or amount as may be agreed to by the Parties of the costs of the arbitrator's fees. Otherwise, each Party shall bear its own costs in an enforcement action.

(vi) Forbearance and Estoppel. A Party's failure to exercise any rights under this Easement or a delay in exercising any such rights will not be construed to constitute a waiver of such right or any other right under this Easement. The Parties also waive any defense or claim of estoppel by laches.

(vii) Force Majeure. Except as provided in Article 7(c), nothing in this Easement will be construed to render either Party liable for damages caused by, or following from, acts or events beyond that Party's control, including fire, flood, storm, earthquake, explosion, civil unrest, war, governmental taking or other governmental action, or any prudent action taken by that Party to prevent, abate, or mitigate the damage to the Plaza caused by, or resulting from, such an act or event.

(d) Grantee's Enforcement Role. Except as otherwise provided in this Easement, Grantor and Grantee intend to rely primarily on Grantee to enforce this Easement and to ensure fulfillment of this Easement's commitments and obligations on behalf of the public.

(e) Third-Party Enforcement Authority. In the event that Grantee ceases to exist and is not replaced by a successor Easement holder under Article 5 or Grantee ceases to serve as the Easement holder or fails to enforce the Easement, Grantor grants to AM4RD, an unincorporated nonprofit association organized under District law, a third-party right to enforce this Easement pursuant to D.C. Code §§ 42-201(3) and 42-203(a)(3), and to assign the Easement to a new holder that satisfies the requirements of the UCEA to hold the Easement and whose organizational purposes include conservation purposes. In order to further protect the Conservation Values and other purposes of this Easement, Grantor grants to the Attorney General of the District a third-party right to enforce this Easement on behalf of the public pursuant to D.C. Code §§ 42-201(3) and 42-203(a)(3), including the right to assign the Easement to a new holder that satisfies the requirements of the UCEA to hold the Easement and whose organizational purposes are generally similar to the purposes of Grantee in any case where Grantee ceases to exist and is not replaced by a successor Easement holder under Article 5, ceases to serve as the easement holder, or fails to enforce the Easement and AM4RD has elected not to exercise third-party enforcement rights or has ceased to exist.

Article 7

Easement Modification, Amendment, and Extinguishment

(a) Limits on Easement Modification and Amendment. This Easement is perpetual and may be modified or amended by the Parties only to: (i) create tax lots for separate ownership of lots

within the Property for tax and financing purposes that do not otherwise affect the treatment of the Property as a single record lot for zoning purposes and do not affect the application of the Easement to the Plaza; (ii) provide physical improvements to the Plaza (without reducing its size or altering its location or configuration) that Grantee deems to be warranted and to better serve the public and the underlying purposes of this Easement; or (iii) provide for other modifications that are mutually agreed to by the Parties and do not unnecessarily impinge on the public's right to use the Plaza, reduce its size, or alter its location or configuration.

(b) Limits on Easement Extinguishment. Notwithstanding Article 8(e), this Easement may be extinguished only if the Property is taken in an eminent domain or condemnation proceeding that is undertaken pursuant to District or federal law by a governmental entity in a judicial proceeding in a court of competent jurisdiction and that a taking results in or causes extinguishment of this Easement in whole or in part. Grantor and Grantee shall act jointly to recover the full value of their interests in the Property, including the full value of the Easement, that are taken pursuant to or as a result of such a proceeding. Grantee may act separately to recover full value of its interests if Grantor fails to act, with Grantee's compensation to be calculated in accordance with Article 7(c). All reasonable expenses incurred by Grantor and Grantee in connection with an eminent domain or condemnation proceeding will be paid out of the recovered amount. Grantee's share of the amount recovered will be calculated in accordance with the formula set forth in Article 7(c).

(c) Valuation of Grantee's Interest. If Grantee's rights under this Easement are extinguished in an eminent domain or condemnation proceeding by a governmental entity as provided in Article 7(b), Grantee is entitled to receive its proportionate share of the compensation realized from the proceeding, with that proportionate share to be calculated in accordance with 26 C.F.R. §§ 1.170A-14(g)(6) and (h) or any successor thereto. Specifically, the fair market value of Grantee's rights will be deemed to be a share of the compensation at least equal to the proportionate value that the Easement, as of its effective date, bears to the value of the Property as a whole as of that date ("Proportionate Value").

Article 8 Federal Tax Considerations

Any action pursuant to Article 8(e) is subject to and limited by Article 7(b). Further, this Article is applicable only if Grantor elects to implement a transfer of the Easement to Grantee as a "qualified conservation contribution" (as such term is defined in 26 U.S.C. §170(h)(1), or any successor thereto) ("Qualified Conservation Contribution").

(a) Qualified Conservation Contribution. Grantor reserves the right to make a transfer of a partial interest in real estate to Grantee that qualifies as a Qualified Conservation Contribution. If Grantor elects to make a Qualified Conservation Contribution of the Easement to Grantee and subsequently transfers or assigns this Easement to another person, that transferee or assignee is obligated to hold the Easement exclusively for "conservation purposes" as such term is defined in 26 C.F.R. § 1.170A-14(d), or any successor thereto, and as more particularly described in this Easement, including to provide or improve space in Adams Morgan for open and free use by members of the public similar to the uses specified in Article 1(a) ("Conservation Purposes").

(b) Conservation Purposes. Grantor has granted this Easement exclusively for Conservation Purposes. The applicable Conservation Purposes are described in this Easement and supported by the binding requirements of this Easement.

(c) Mineral Interests. Grantor represents that, to the best of Grantor's knowledge, no person has retained a qualified mineral interest in the Property that would disqualify this Easement as a Qualified Conservation Contribution under 26 C.F.R. §1.170A-14(g)(4) or any successor thereto. The grant of such a mineral interest is prohibited on and after the effective date of the Easement, and Grantee has the right to prohibit the exercise of such a right or interest if granted in violation of this provision.

(d) Notice Required Under IRS Regulations. To the extent required to qualify as a Qualified Conservation Contribution and comply with 26 C.F.R. § 1.170A-14(g)(5)(ii) or any successor thereto, and only to the extent such activity is not otherwise subject to review under this Easement, Grantor agrees to notify Grantee in writing before exercising reserved rights that may have an adverse impact on the conservation interests associated with the portion of the Property subject to this Easement.

(e) Required Uses of Compensation for an Extinguishment of the Easement. Subject to the limits of Article 7(b) on extinguishment of this Easement and in accordance with 26 C.F.R. § 1.170A-14(g)(6) or any successor thereto, Grantor agrees that, if it elects to make a Qualified Conservation Contribution of the Easement to Grantee pursuant to this Article 8: (1) the grant of this Easement gives rise to a real estate right, immediately vested in Grantee, that entitles Grantee to compensation upon extinguishment of the Easement that is at least equal to the Proportionate Value; and (2) the Easement is perpetual and may be extinguished only as provided in Article 7(b) in the rare case where a subsequent unexpected change in the conditions surrounding the Property make impossible or impractical the continued use of the Property for Conservation Purposes and the restrictions of the Easement are extinguished by a judicial proceeding that results in or causes a taking in whole or in part of the Property. Notwithstanding such an extinguishment, Grantee further agrees to use its share of the proceeds from such a taking in a manner consistent with the Conservation Purposes of the original contribution of the Easement in recognition of the perpetual nature of the Easement and continuation of its underlying objectives. The fair market value of Grantee's right will be a share of the compensation provided for such extinguishment that is at least equal to the Proportionate Value.

(f) Acknowledgment of Donation. Except for such monetary consideration (if any) as is set forth in this Easement or pursuant to the Settlement Agreement, Grantee acknowledges that no goods or services were provided to the Grantor in connection with establishing this Easement.

(g) No Representation of Tax Benefits. Grantor represents, warrants, and covenants to Grantee that:

(i) Grantor has not relied upon information provided by Grantee with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Grantor under applicable law or the value of this Easement or the Property.

(ii) Grantor has relied solely on its own judgment and the professional advice provided by its legal, financial, and financial representatives.

(iii) The grant of this Easement is not conditioned upon the availability or amount of a deduction, credit, or other benefit under applicable law.

Article 9 Miscellaneous

(a) **Notices.** All written notices required by this Easement will be delivered personally, electronically, or by mail, addressed as follows:

To Grantor: Mail or in-person delivery:
James Knight
Jubilee Housing, Inc.
1631 Euclid Street, NW P-5
Washington, DC 20009
Electronic delivery:
James Knight: jknight@jubileehousing.org

To Grantee: Mail or in-person delivery:
Denis James
Kalorama Citizens Association
PO Box 21311
Washington, DC 20009
Electronic delivery:
Denis James: denisjames@verizon.net

A Party may designate another name, email address, or physical address as its contact person or contact address by providing written notice to the other Party of the applicable replacement name, email address, or physical address. Mail delivery is required for a notice of assignment, sale, or transfer pursuant to Articles 5(a)(iv) and (b)(iv) or a notice of a violation of the Easement pursuant to Article 6(c). Delivery of all other written notices required by this Easement may be made in person or electronically; provided that personal delivery is evidenced by a receipt and electronic transmission is authenticated by the sender. Notice will be deemed to be granted as of the date the notice is delivered in person, electronically, or by express mail or four (4) Calendar Days after its deposit in the U.S. Postal Service as evidenced by a receipt provided by such service.

(b) Definitions.

(i) **Calendar Day.** The term "Calendar Day" means the day following the calendar day in any case where the calendar day specified pursuant to this Easement falls on a Sunday or a day designated by the District as a public holiday.

(ii) **Grantee.** The term "Grantee" means the Grantee and any of its directors, officers, employees, contractors, and agents and any successors and assignees of any such person.

(iii) Grantor. The term “Grantor” means the Grantor and any of its directors, officers, employees, contractors, and agents and any successors and assignees of any such person.

(c) Governing Law. This Easement and the rights and obligations under it will be governed by the laws of the District.

(d) Liberal Construction. This Easement will be liberally construed to effect its purposes and protect the Conservation Values and the UCEA.

(e) Severability. If any clause, sentence, or other portion of this Easement is deemed to be illegal, null, or void for any reason by any court of competent jurisdiction or other lawful authority, the remaining portions of this Easement will remain in full force and effect.

(f) Entire Agreement. This Easement represents the entire agreement between Grantor and Grantee and supersedes any prior understandings, agreements, or representations, whether express or implied or established pursuant to common law, relating to, or affecting the provisions of this Easement other than the Settlement Agreement.

(g) Counterparts. The parties have executed this Easement in counterparts, each of which will be deemed to be an original.

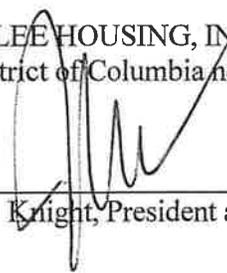
(h) Effective Date. The effective date of this Easement, including its recitals and restrictions, is the date on which it is recorded in the land records of the District by Grantee regardless of the date of execution. Following execution of the Easement and issuance of an order by Superior Court dismissing the Lawsuit, Grantee shall promptly record this Easement in the land records of the District and may re-record it as appropriate in connection with any modification, amendment, or other event in the judgment of Grantee requiring re-recording.

IN WITNESS WHEREOF, Grantor and Grantee, on the date specified below, have executed this Easement.

SIGNATURES ON FOLLOWING PAGES

GRANTOR:

JUBILEE HOUSING, INC.
A District of Columbia nonprofit corporation



James Knight, President and CEO

12-3-25

Date of signature

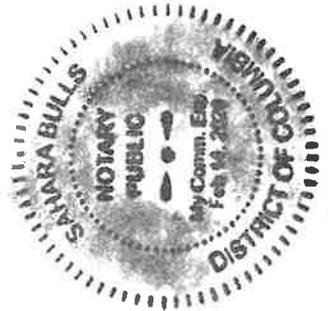
DISTRICT OF COLUMBIA) ss:

I, Sahara Bulls a notary public in and for the jurisdiction aforesaid, do hereby certify that on this 3 day of December, 2025, personally appeared before me in my jurisdiction aforesaid James Knight, being personally well known to me, or satisfactorily identified, as the person named as the President and CEO of Grantor in the foregoing and annexed instrument, and did acknowledge the same as his free and voluntary act and deed of Grantor.



Notary Public Signature
[NOTARIAL SEAL]

My Commission Expires: 2/14/2028



GRANTEE:

KALORAMA CITIZENS ASSOCIATION
A District of Columbia nonprofit corporation

Denis James
Denis James, President

12.23.2025
Date of signature

DISTRICT OF COLUMBIA) ss:

I, Edward Shelton, a notary public in and for the jurisdiction aforesaid, do hereby certify that on this ___ day of December, 2025, personally appeared before me in my jurisdiction aforesaid Denis James, being personally well known to me, or satisfactorily identified, as the person named as the President of Grantee in the foregoing and annexed instrument, and did acknowledge the same as his/her free and voluntary act and deed of Grantee.

Ed Shelton

Notary Public Signature
[NOTARIAL SEAL]

My Commission Expires: 05/31/2029

District of Columbia
Signed and sworn to before me on
23 December 2025
by DENIS J E JAMES
Ed Shelton
Notary Public
My commission expires 05/31/2029



**EXHIBIT A:
LEGAL DESCRIPTION OF THE PROPERTY**

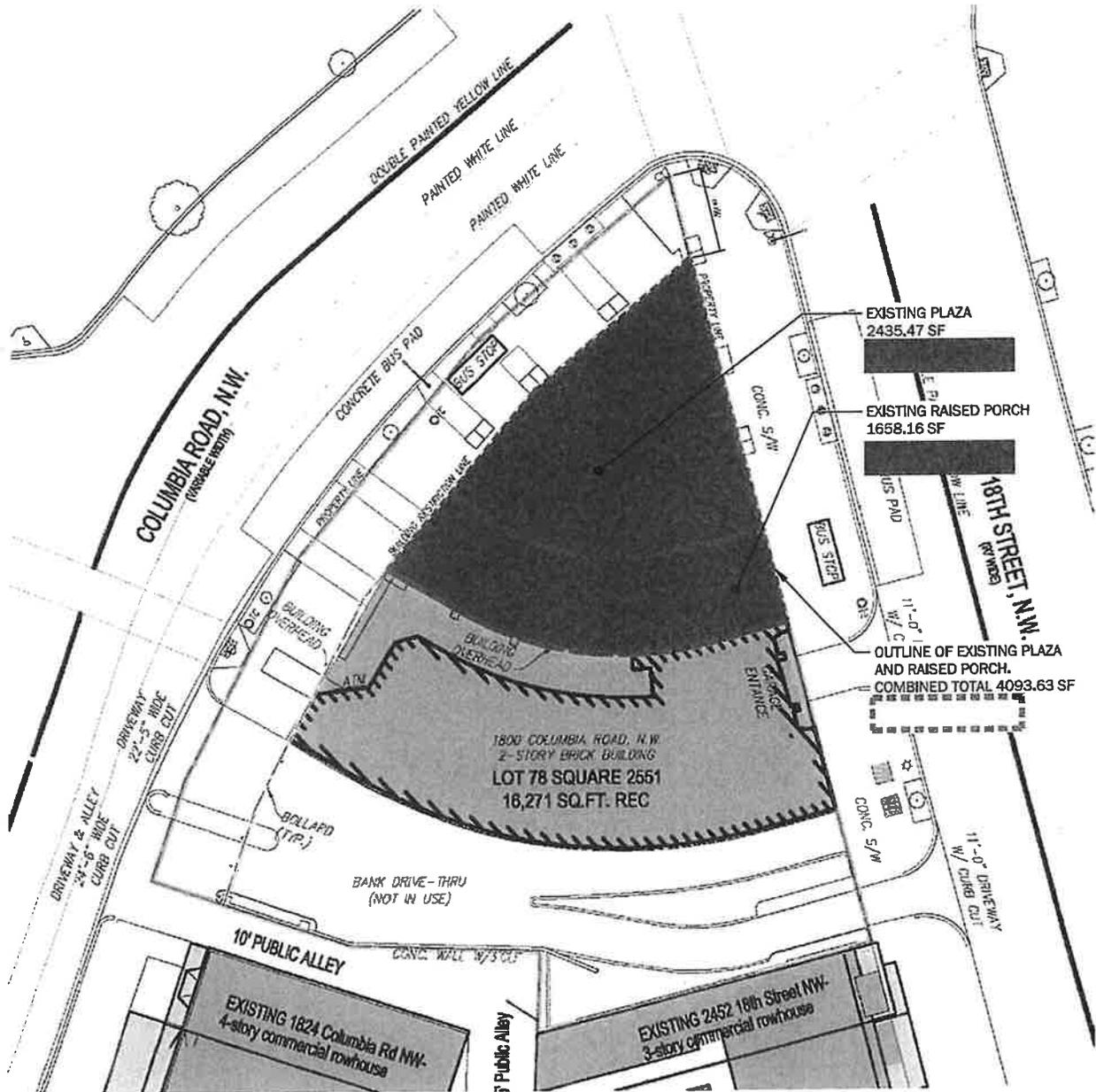
All that certain lot or parcel of land, lying and being in the District of Columbia, and being more particularly described as follows:

Lot numbered Seventy-Eight (78) in the combination of lots made by Perpetual Federal Savings and Loan Association in Square numbered Twenty Five Hundred Fifty-One (2551), as per plat recorded in the Office of the Surveyor for the District of Columbia in Book 166 at Page 72.

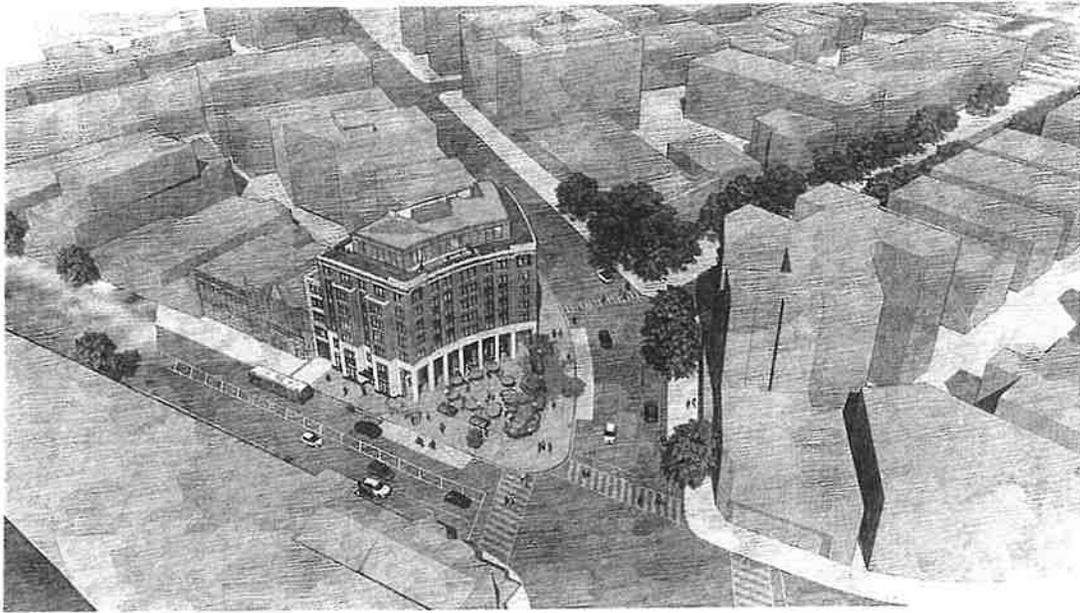
**EXHIBIT B:
DIMENSIONS AND PLACEMENT OF EXISTING PLAZA**

EXISTING SITE PLAN - PLAZA AND RAISED PORCH INDICATED

SCALE: 1/32" = 1'-0" 7/23/2017



**EXHIBIT C:
RENDERINGS OF THE NEW BUILDING AND NEW PLAZA**



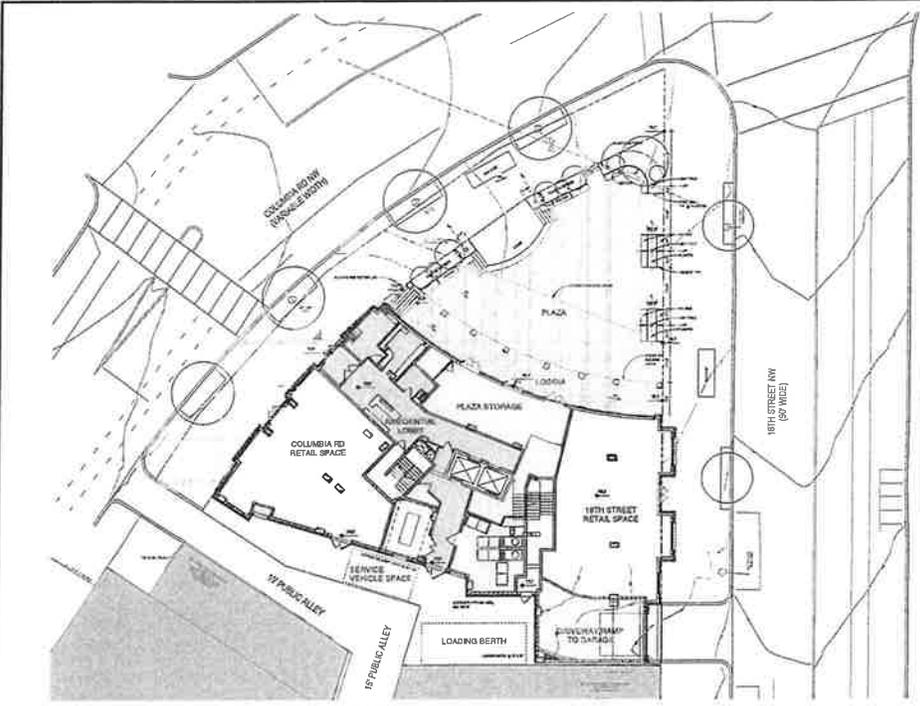
AERIAL RENDERING OF PROPOSED NEW 1800 COLUMBIA BUILDING / JUBILEE HOUSING

EC/A
ARCHITECTURAL RENDERING

Jubilee Housing
ARCHITECTURAL RENDERING

**1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET**

A0
08.26.2024



SITE PLAN - BUILDING, LOGGIA, AND PLAZA

BUILDING AREAS

LEVEL	AREA
BASEMENT LEVEL	2878 SF
1ST FLOOR	7790 SF
2ND FLOOR	7794 SF
3RD FLOOR	8123 SF
4TH FLOOR	8123 SF
5TH FLOOR	8123 SF
6TH FLOOR	8223 SF
7TH FLOOR	8140 SF
PH FL, ATD, CLUB	1356 SF
	75348 SF



**1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET**



VIEW FROM ACROSS INTERSECTION

ECA
ARCHITECTURAL CONSULTANTS & ENGINEERS

Jubilee Housing

1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET

A2
08 26 2024



VIEW ACROSS COLUMBIA ROAD

ECA
ENVIRONMENTAL CONSULTANTS ASSOCIATES
Jubilee HOUSING

1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET

A3

08.26.2024



VIEW ACROSS 18TH ST

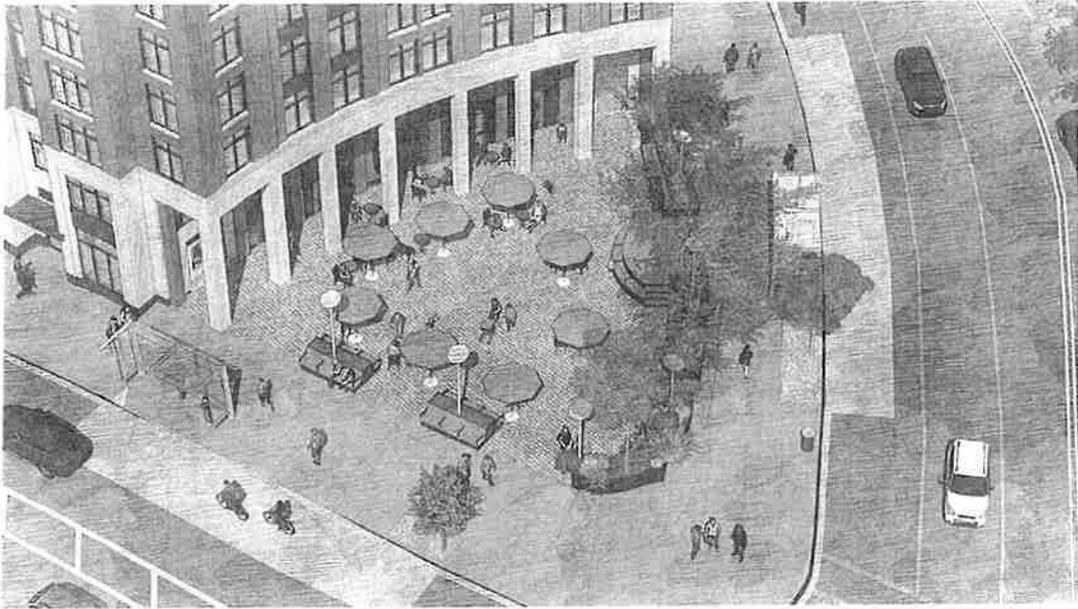
ECA
ENVIRONMENTAL CONSULTANTS ASSOCIATES

Jubilee Housing
A DC HOUSING AUTHORITY PROGRAM

1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET

A4

08.28.2024



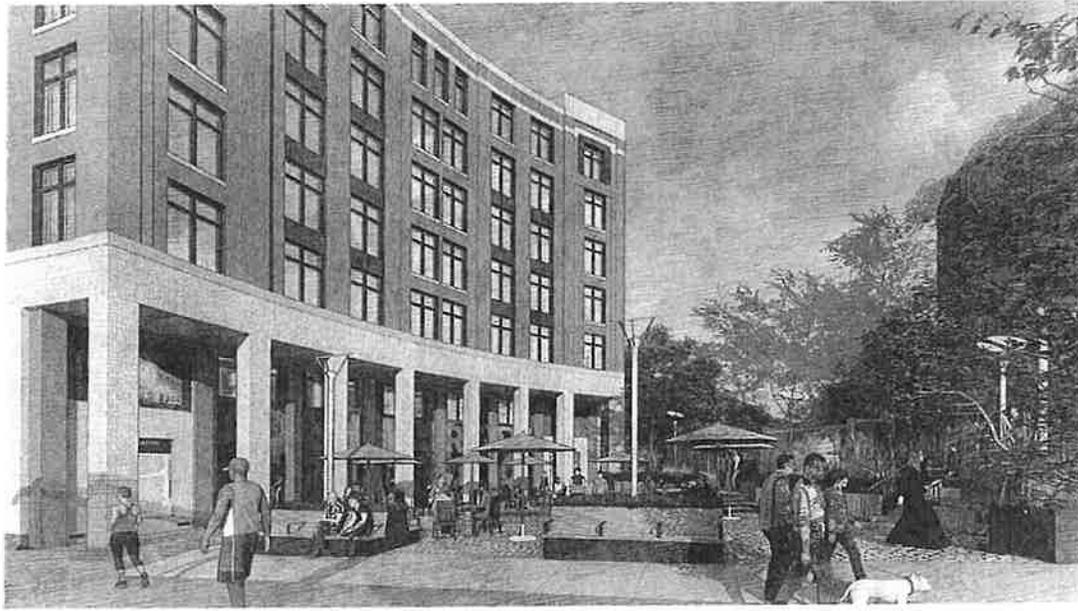
AERIAL VIEW OF PLAZA (TYPICAL DAILY SETUP)

ECIA
Environmental Community Impact Assessment

Jubilee Housing
1000 Columbia Road NW, Washington DC

**1000 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET**

A5
08.26.2024



VIEW OF PLAZA (TYPICAL/DAILY SETUP)

ECA
INCORPORATED

Jubilee Housing

**1800 COLUMBIA ROAD NW, WASHINGTON DC
HISTORIC UPDATE SET**

A6
08.28.2024



At wall panels and (3 sets of) doors at inside of loggia, extending to the 2nd floor window sills: murals. Images shown are placeholders only. Artist and composition to be selected by Jubilee and the community, potentially with involvement of the DC Commission on the Arts and Humanities (financing and/or guiding the process).

At panel between pilasters (2nd floor level of building): Large image and name/basic information of memorial

Background in-fill: metal panels, light limestone-color finish

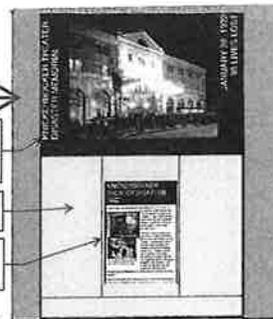
In recess panel at eye level: Plaque with narrative and image(s) describing the disaster

Memorials to be designed by specialists working with the community. These sketches are only intended to show the architectural integration and potential general concepts.

At panel between pilasters (2nd floor level of building): Large image and name/basic information of memorial

Background in-fill: metal panels, light limestone-color finish

In recess panel at eye level: Plaque with narrative and image(s) about redlining & Perpetual Bank



KNICKERBOCKER THEATER MEMORIAL DISPLAY



REDLINING IN DC/PERPETUAL BANK HISTORICAL DISPLAY

SPECIALTY/CIVIC ELEMENTS INCORPORATED INTO THE ARCHITECTURE

**EXHIBIT D:
PLAZA DESIGNS AND OPERATION**

PLAZA DESIGNS AND OPERATION

General:

- Name: Adams Morgan Plaza.
- Plazas: This Exhibit covers: (1) the existing plaza at 1800 Columbia Road, N.W. (“Property”), as described in **Exhibit B** (“Existing Plaza”); (2) the new plaza to be provided by Jubilee Housing, Inc. (“Grantor”) at the same location and with at least the same size as the Existing Plaza, as described in **Exhibit C** (“New Plaza”); and (3) any future Plaza to be provided in place or instead of, the New Plaza at the same location and with at least the same size as the Existing Plaza (“Future Plaza”).
- The Existing Plaza, New Plaza, and any Future Plaza are referred to in this Exhibit individually as “Plaza” and collectively as “Plazas” and are intended to serve primarily as a space for open and free use by the public and for performances and other events while serving secondarily as a vending space from time to time, including for a seasonal farmer’s market and other markets.
- Kalorama Citizens Association, a District nonprofit organization (“KCA” or “Grantee”), is the easement holder. KCA was founded in 1919 and focuses primarily on promoting the interests of the residents of the portion of Adams Morgan that contains the Existing Plaza and encompasses the Kalorama Triangle, Washington Heights, and Lanier Heights neighborhoods.
- Management of the Plazas: Grantee is primarily responsible for management of performances and other events on the Plazas, subject to the requirements of the easement between Grantor and Grantee (“Easement”), while Grantor is primarily responsible for establishing general policies for use of the Plazas and managing use of the Plaza for vending, subject to the requirements of the Easement. In implementing such general policies and in managing vending, Grantor shall not interfere with Grantee’s management of performances and other events on the Plaza or the stage or with spontaneous or unscheduled activities by members of the public on the Plaza or the stage.
- The New Plaza will be a distinct and separate space from the affordable housing project (“New Building”), developed by Grantor for the Property and designed to be compatible with the historic preservation guidelines applicable to new construction in historic districts like the Washington Heights Historic District; any Future Plaza that replaces, or is provided instead of, the New Plaza will be similarly separate and distinct from a new building or other structure constructed or provided on the Property and will also be designed to be compatible with any applicable historic preservation guidelines.
- The New Plaza’s surface will be level or flat to the extent possible, with only such slope as is necessary to manage water runoff and the varying heights of the public sidewalks that the New Plaza will abut and the resulting need for a retaining wall on the Columbia Road side of the New Plaza.
- Steps will connect the New Plaza and the public sidewalk on the Columbia Road side of the Property, which will be, at its highest point, about four (4) feet above the surface of the New Plaza on the western side of the Columbia Road frontage.

- The New Plaza will generally be flush with the public sidewalk on the 18th Street side of the New Plaza and open and contiguous to the extent possible with gradual and gentle ramps or slopes where it meets the public sidewalk.
- The Grantor may be obligated to provide a Future Plaza in several difficult-to-predict and unknowable scenarios. For example, unforeseen circumstances like a natural or manmade disaster could preclude construction of the New Plaza and the New Building. Another possible scenario is that the New Plaza and the New Building will reach the end of their useful lives at some point in the distant future, requiring their replacement. Whatever the case may be, any Future Plaza, whether provided in place or instead of the New Plaza, must be in the same location and configuration and with at least the same size as the Existing Plaza and must be constructed in accordance with designs and plans approved by Grantee.
- A Future Plaza will include equipment and facilities and other features comparable to those required for the New Plaza but the details will be developed in connection with developing designs and plans for the Future Plaza.
- Storage space of about 600 square feet will be provided in the first floor of the New Building directly adjacent to the New Plaza, with direct and ready access to the New Plaza and keys or access information provided to Grantee; it will be designed to provide the capacity required to store all New Plaza tables and chairs, umbrellas, vending tents and tables, and any other portable equipment and facilities required or permitted by the Easement and will also include restroom facilities (unless the final design is modified in accordance with applicable modification procedures to remove restroom facilities) for use of vendors and other authorized users (but not for use by the general public).
- Grantor shall carry general liability insurance for the Plaza. Grantor and Grantee shall indemnify each other and be liable as provided in Article 6(c)(iv) and other applicable provisions of the Easement. Grantor shall be responsible for keeping the Plaza clean and orderly, with cleaning and trash disposal policies to be adjusted in consultation with Grantee as reasonably necessary to ensure that the Plaza is clean and well maintained.
- Grantor, as the owner of the Plazas and the provider of their equipment and facilities, is generally responsible for repair and maintenance of the Plazas and rodent and pest control and abatement and will be responsible for upgrading the New Plaza's equipment and facilities (as well as its trees and the plants) and operation of equipment and facilities for the Plazas (except for equipment and facilities expressly designated as subject to control by Grantee in this Exhibit, in the Easement, or by agreement between Grantor and Grantee).
- Subject to the Easement, Grantee reserves the right to purchase new equipment and facilities to provide equipment and facilities for performances and other events and to augment the list of equipment and facilities for the New Plaza that are included in this Exhibit.

Historic Markers and Displays:

- The design for the Adams Morgan Plaza logo will be agreed to by KCA and AM4RD, with signage containing the logo to be installed on the New Plaza in a

prominent and visible spot agreed to by KCA and AM4RD; such design shall be approved by the Grantor, and the Grantor shall not unreasonably withhold or delay such approval.

- Key historic events will be visually memorialized on the New Plaza, with the information and images provided for each event to be: (1) developed by a person with expertise and specialized skills in such design work, in consultation with community representatives, including representatives provided or recommended by KCA and AM4RD; (2) approved by KCA and AM4RD; and (3) included on murals installed on the two ends of the New Plaza's loggia ("Loggia"):
 - The 1922 Knickerbocker disaster (Loggia mural)
 - The history of redlining in the neighborhood, resulting in the 1977 mortgage lending practices agreement with Perpetual Federal Savings and Loan Association ("Perpetual") and its central role in the 1977 enactment of the Community Reinvestment Act and Perpetual's agreement to provide the Existing Plaza (Loggia mural).
- Signage acknowledging the Easement's history (this information could be part of the redlining mural or provided in a separate sign or display): The threat by developers to demolish the Existing Plaza in 2016 and remove a vital public space at the heart of Adams Morgan led to an eight (8) year legal battle initiated by two community organizations to preserve the Existing Plaza and recognize the existence of the public's right to use the Existing Plaza via a longstanding public easement, culminating in establishment of this Easement and its recognition, confirmation, and application to the Plazas by a settlement agreement between defendant Grantor and plaintiffs KCA and AM4RD in the Kalorama Citizens Association v. SunTrust Bank Company, 2017-CA-004182-B, lawsuit that was filed in the Superior Court of the District of Columbia in 2017. Such signage is to be approved by the Grantor, which approval shall not to be unreasonably withheld or delayed.

Features of the New Plaza for Everyday Use:

- Permanent built-in planters along the periphery on the Columbia Road side of the New Plaza.
- At least five (5) new small- to medium-sized trees along the Columbia Road periphery of the New Plaza.
- Lighting that covers the New Plaza, is automated (activated based on the lack of daylight as measured by photocells or a similar technology); the lighting must be both not too harsh and bright enough to ensure public safety; lighting poles will also provide access to electricity and wireless Internet access and designed, installed, and operated so that their light generally does not reach inhabited areas of the New Building.
- In addition to the electrical outlets on the bases of the lighting poles, electrical outlets will be installed in the Loggia and on the stage and will be made available to vendors and stage users.
- Recessed lighting will be installed in the Loggia.
- Built-in or permanent benches will be provided along the Columbia Road side of the New Plaza and two back-to-back benches, with a planter between the two

benches, will be installed on the 18th Street side of the New Plaza and will face the New Plaza in one direction and 18th Street in the other direction.

- At least fifteen (15) small, round, portable, and stackable tables for use by casual visitors to the New Plaza on a first-come, first-served basis (the tables should be durable and heavy enough so that they cannot be easily stolen but light enough to be portable for storing them as needed).
- At least fifteen (15) foldable and portable umbrellas for the tables, with weighted bases that prevent the umbrellas from being stolen or toppled by wind.
- At least fifty (50) portable and stackable or foldable chairs for use by casual visitors to the New Plaza on a first-come, first-served basis (the chairs should be durable and heavy enough so that they are not easy to steal but light enough to be portable for storing them as needed).
- Another one hundred (100) portable and stackable or foldable chairs for temporary use in connection with performances and other events on the New Plaza (these chairs could be lighter than the chairs intended for permanent daily use in order to ensure ease of portability and quick deployment for performances and events).
- At least five (5) wheeled dollies to move furniture and equipment on and off the New Plaza.
- Grantor will be responsible for deploying and removing the portable equipment and furniture on the New Plaza that is required by this Exhibit and for cleaning, maintaining, repairing, and periodically replacing such equipment and furniture.
- No synthetic turf or artificial plants will be installed or deployed on the Plaza (the demarcation between the New Plaza and the public sidewalk will be built-in planters).
- Grantor will install a sturdy water fountain, with high and low spigots and a spigot at dog level, that is handicapped accessible, including the necessary piping and plumbing to make it work on a consistent basis, in a location close to the northeast corner of the Plaza.
- Two hose bibb(s), including the necessary hoses and other supporting equipment, will be provided for watering plants and trees and cleaning the New Plaza.

Vending Uses of the Plazas:

- Grantor shall provide portable tents and tables for the New Plaza (as described above) in a readily accessible storage area on the first floor of the New Building that is directly adjacent to the New Plaza (tents and tables will be made available to vendors at fees established by Grantor pursuant to the Easement but vendors may also provide their own equipment and facilities).
- Grantor, in consultation with Grantee, is responsible for setting reasonable and non-discriminatory vendor fees for vending on the Plazas.
- Grantor shall provide access to the New Plaza via the elevator connecting the parking garage to the residential lobby of the New Building.
- Vendor fee revenues will support operation and maintenance of the Plaza or will be allocated as otherwise agreed to by Grantor and Grantee.

- For the New Plaza, Grantor shall provide at least ten (10) foldable and portable tents (10x10 feet) for vending stalls that can be quickly and easily assembled by a single vendor.
- For the New Plaza, Grantor shall provide at least ten (10) foldable and portable tables for vendors (10x4 feet).
- When the Loggia is used for vending, Grantor shall ensure that the Loggia is open for passage by members of the public and that any tables or other vending equipment deployed on the New Plaza do not interfere with the public's ability to use the Loggia.
- In recognition of the difficulties of parking on Columbia Road and 18th Street, Grantor and Grantee shall take steps to ensure that parking spots provided on the public streets adjacent or near to the Plazas are reserved for vendor vehicles to the extent possible; Grantor shall provide access for vendors to the loading dock associated with the New Building if the loading dock is available or not reserved for specific users and a limited number of parking spots in the parking garage, with the number to be established by agreement between Grantor and Grantee and to take into account the need for parking spots for residents of the New Building and Grantor's employees, agents, and contractors.
- Grantor is responsible for establishing policies for vending on the Plazas as specified in the Easement. These policies will focus primarily on equitably and fairly managing competition for limited vending space and time, establishing nondiscriminatory and reasonable Vending Fees, approving vending applications, ensuring enforcement of public health and safety requirements, and minimizing the impact of vending on the public's ability to use the Plaza. In addition, these vending policies will also include special procedures that limit the review process and other procedural requirements applicable to first-time vendors (defined as vendors who have little or no prior experience in making commercial sales to members of the public) and limited vendors (defined as vendors selling a small number of items at prices that are roughly equal to or less than cost-based prices) as described in the Easement. Grantor may not establish preferential standards or requirements for its own vending operations or those of its affiliates or other related entities except to the extent permitted by or pursuant to the Easement.
- Grantor is responsible for coordinating with Grantee regarding the scheduling of all events on the Plaza (*e.g.*, vending, performances, other events) to avoid scheduling conflicts.
- The space and time limits on vending are intended to maximize the space available on the Plaza for open and free use by the public and performances and other events. At the same time, these limits should not preclude vending activities that can help ensure a vibrant and active Plaza such as small-scale sales of food or non-alcoholic beverage or periodic or occasional use of the Plaza for major vending activities such as a farmer's market..

Non-vending Uses of the Plaza:

- Grantee will generally be responsible for managing non-vending uses of the Plaza, including the stage.

- Stage Name: The Adams Morgan Plaza Stage.
- For the Existing Plaza, the stage will be the existing raised porch, which sits directly in front of the existing building and overlooks the Plaza space.
- For the New Plaza, the stage will be on the Columbia Road side of the New Plaza and flush with the public sidewalk for ease of access by disabled and other persons, with the dimensions, configuration, and placement specified in **Exhibit C**.
- The stage and Plaza spaces will be available for booking on a first-come, first-served basis for performances and other events on a publicly accessible reservation system established or provided by Grantee; Grantee may modify the first-come, first-served policy from time to time to restrict multiple bookings by the same user of the stage or Plaza to ensure open and fair access to the stage and the Plaza for performances and other events; Grantee is responsible for establishing event fees for use of the stage or Plaza space for performances and other events as provided in the Easement.
- Grantee is responsible for coordinating with Grantor regarding the scheduling of all events on the Plaza (e.g., vending, performances and other events) to avoid scheduling conflicts.
- Event fee revenues will support operation and management of the stage and performances and other events on the Plaza as provided in the Easement; Grantee may allocate revenues to purchase new equipment and facilities for performances and events and to promote events and compensate event performers or producers.
- Grantor shall equip the New Plaza to provide seating for up to 150 patrons for a performance or other event.

Unscheduled Uses of the Plaza:

- The Plaza, including the stage, will be available for spontaneous or unscheduled use by members of the public; provided that the activity does not interfere with scheduled vending, performances, and other events.
- Grantee shall encourage and support unscheduled use of the Plaza and the stage for spontaneous or unscheduled uses during any period where either or both spaces have not been reserved for scheduled performances or other events or vending activities.

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RECORDING FEES	\$25.00
SURCHARGE	\$5.00