

BOARD OF ZONING

2011 MAR -8 PM 2:14

John T. Epting
Director

jepting@goulstonstorr.com
202-721-1108 Tel
202-263-0538 Fax

March 8, 2011

By Hand Delivery

Meredith Moldenhauer, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

BOARD OF ZONING
2011 MAR -8 PM 1:33

Re: Board of Zoning Adjustment Order Nos. 17600-A and 17606-B – Emergency Request for Waiver to Extend Orders

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17600-A
EXHIBIT NO. 39

Dear Chairperson Moldenhauer and Members of the Board:

On behalf of Fort Totten North, LLC, and Fort Totten South, LLC (collectively, the “**Property Owners**”), the owners of 300-320 Riggs Road, NE (Lot 52 in Square 3748) (“**Fort Totten North**”), and 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760) (“**Fort Totten South**”, collectively with Fort Totten North, the “**Properties**”), respectively, and the successors in interest to the applicants under BZA Order Nos. 17600-A and 17606-B (the “**Orders**”), respectively, we hereby submit this letter as an emergency request for a second extension of the expiration date of the Orders. The Board of Zoning Adjustment (the “**Board**” or “**BZA**”) extended BZA Order No. 17600 on March 24, 2009 such that BZA Order No. 17600-A (collectively, attached as Exhibit A) will expire on March 21, 2011. The Board extended BZA

Board of Zoning Adjustment
District of Columbia

CASE NO. 17600
EXHIBIT NO. 39A1

Order No. 17606 on March 24, 2009 such that BZA Order No. 17606-B (collectively, attached as Exhibit B) will expire on May 9, 2011.

As described below, due primarily to the protracted reconstruction of the adjacent intersection by the District Department of Transportation (“**DDOT**”), coupled with ongoing negative economic circumstances, the projects on the Properties have not been able to proceed with their building permit applications and therefore, will lose their entitlements if the Orders are not extended. The Properties are part of an area-wide development, based on a Land Disposition and Development Agreement (“**LDA**”) between Dakota Triangle, LLC and the District of Columbia, and joined into by the predecessors in interest to the Properties, dated December 19, 2008 (attached as Exhibit C). The master development plan for those three sites includes nearly 800,000 square feet of developable, above-grade gross square feet, with approximately 95,000 square feet devoted to retail use, approximately 898 residential units, and approximately 720 parking spaces. As a result of the LDA, the projects on the Properties are involved in a joint effort between DDOT, the District of Columbia, the community, and the Property Owners. Since the Properties are linked to one cohesive effort, DDOT’s delay in constructing the intersection has jeopardized the Property Owners’ ability to move forward with the projects on the Properties. The intersection was initially intended to be finished in the Fall of 2009. However, the intersection is still being constructed. As evidenced by the pictures of the current state of the construction of the intersection (taken on March 1, 2011 and attached as Exhibit D), there are a number of lane closures, temporary traffic control devices, and construction and utility relocation equipment that make gaining access to the Properties difficult, if not impossible. In addition, the reconstruction of the intersection has altered typical travel patterns in the area with the likely diversion of traffic to other routes while the construction is in progress.

DDOT's inability to finish the reconstruction work in a timely manner is similar in nature to pending litigation against the project; in that situation, the period of an Order's validity is tolled under § 3130.5. Due to DDOT's failure to finish the road construction, the BZA should find the basis for a waiver to extend the subject Orders. Allowing the Orders to lapse would further delay the redevelopment efforts. Further, not extending the Orders would create a negative impact on the District, due to its long term interest in this area and the surrounding neighborhood due to the denial of affordable housing and vital retail currently unavailable in the vicinity.

I. Jurisdiction of the BZA

Section 3130.6 authorizes the Board to grant one time extension from BZA Orders. The BZA possesses the inherent authority to waive the provisions of 11 DCMR § 3130.1 under 11 DCMR § 3100.7 in order to extend its Orders as it deems necessary. Under 11 DCMR § 3100.5, the BZA "may, for good cause shown, waive any of the provisions of [Chapter 31 of the Zoning Regulations] if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." As detailed above, not granting the waiver will prejudice the Property Owners and will not be in the long term interest of the District of Columbia.

II. Property Owners' Request

Therefore, Property Owners hereby request, that:

1. The BZA waive its time limits relating to BZA Order No. 17600-A and BZA Order No. 17606-B for good cause shown and allow the Orders to remain

effective for two (2) years after March 21, 2011 and May 9, 2011 (or later per the phasing request below), respectively; **or**

2. BZA Order No. 17600-A and BZA Order No. 17606-B are tolled until DDOT completes the construction of the roads and intersection adjacent to the Properties and the Property Owners provide notice to the BZA that such construction has been completed. From that point, the Orders are extended two (2) additional years, with BZA Order No. 17606-B having the option to be phased for a ten (10) year period.¹

III. Standards for Evaluation of Request

The Property Owners are asking for such action by the BZA as the result of a unique confluence of factors that have not permitted the projects on the Properties to proceed.

A. LDA and Intersection Reconfiguration

The Property Owners' projects are part of the area-wide development project mentioned above which includes the property bounded by Riggs Road, NE, South Dakota Avenue, NE, Parcel 137/86 and Lot 10 in Square 3760 ("**DDOT Parcel**", collectively with the Properties, the "**Project Site**") which is governed by the LDA. The LDA contemplates developing the DDOT Parcel as part of a larger mixed-use development concept that includes the Properties.² The

¹ In BZA Order No. 17721, dated March 28, 2008, the Board approved the construction of a two phased project at 60 L Street, N.E. whereby the first phase of the project was approved for a period of two years and the second phase of the project was approved for a period of ten years (unless the plans for the erection or alteration of the structures were filed for the purposes of security a building permit in the interim). The uncertainty of market conditions was cited for such two phased approval; here the road reconfiguration and the overall size of the Project on the three parcels are reasons for phasing. We request that a ten (10) year phasing approval is granted for BZA Order No. 17606-B for Fort Totten South.

² The D.C. Council's related legislation, the "South Dakota Avenue-Riggs Road Excess Property Emergency Disposition Approval Resolution of 2006" (R16-746) (the "**Resolution**") (attached as Exhibit F) and the "Riggs Road Disposition Extension Approval Resolution of 2008" (R17-678) ("**Extension Approval**") (attached as Exhibit G), further demonstrates that the Properties are all part of a larger development.

projects on the Project Site are intended to function as one organic project, with the uses complementing and enhancing each other and ultimately leading to a carefully coordinated redevelopment of the Fort Totten neighborhood as envisioned by the District of Columbia. Expiration of the Orders will negatively impact the entire Project Site development and attempts to jump start the area's much-needed redevelopment. Coordinating redevelopment of the three large parcels comprising the Project Site in a coherent fashion is already difficult; not extending the time limits will place additional constraints on the Properties' development.

In order to develop the larger mixed-use project, the Property Owners required an integrated and collaborative effort with DDOT to redesign and reconstruct the roads and intersection of Riggs Road and South Dakota Avenue (including the removal of the ramp surrounding the DDOT Parcel). The design process to reconcile DDOT's interests of vehicular and pedestrian safety and efficient traffic flow with the Property Owners' concerns of creating a pedestrian friendly intersection with "Main Street" appeal and easy access to retail options and the resulting work by DDOT have been underway since the passage of the Resolution on July 11, 2006. Such work by DDOT created significant delay in finalizing the LDA and required the Council's re-authorization of the disposition of the DDOT Parcel. Although DDOT's construction and reconfiguration of such new intersection was intended to commence in Spring 2008 and be completed approximately eighteen months later, such work did not start until March 2010 and is still ongoing. Pictures of the current state of the road and intersection construction are attached as Exhibit D. Pictures showing the extent of the road and intersection construction area are attached as Exhibit E. DDOT has stated to the Property Owners that the earliest the intersection might be completed (and therefore, the earliest date that affiliates of the Property Owners could close on the DDOT Parcel) is approximately September 9, 2011. Until the

intersection is finished and closing occurs under the LDA, it is premature to seek to force development at the Project Site. It is only at such point that the projects' construction can begin. In fact, the Property Owners cannot access the Fort Totten South site from the road network given the current construction disruption.

Among other aspects, the final construction of the intersection will set the terms for the financial aspects of the transaction with the District, since the final boundaries of the DDOT Parcel will only be known at such time. Since the DDOT Parcel boundaries are unknown until the DDOT work is completed, the Feasibility Period described in Article 1 (page 9) and § 2.8 (page 24) of the LDA had to be extended (although it was intended to run 210 days after December 19, 2008). Under § 5.1.1(j)(y) of the LDA (page 36), the realignment of Riggs Road is to be completed and the District is to give notice to affiliates of Property Owner upon completion as a condition for such affiliate to close under the LDA. Therefore, the entire project is stalled until the reconstruction of the intersection and related roads is finalized.

It would not be reasonable to expect any developer to proceed with the construction of the project on any portion of the Properties, or even to expend substantial sums of money to prepare plans to do so, if there is a possibility that the overall development will be further delayed. Further, no tenant would sign any lease or letter of intent on the site nor would any lender commit to funding such project until they also know that the project is proceeding with certainty. Therefore, the Property Owners could not be expected to construct the buildings approved by the Orders until the construction of the intersection and related roads is complete and an affiliate of the Property Owners has closed on the DDOT Parcel.

B. Economic and Market Conditions

While the road construction poses the main impediment to pursuing the development approved under the BZA Orders, the current economic conditions cannot be entirely dismissed. Despite such conditions, the Property Owners (and their affiliates) have made good faith efforts to progress towards building permits to the maximum extent possible. The Property Owners have continued to perform site studies to prepare the sites for construction and have demolished the old buildings on 300-330 Riggs Road, NE. In addition, the Property Owners have approached numerous lenders and possible tenants for the Properties without obtaining a firm commitment as a result of the uncertainty described herein. The extension of the Orders would remove one such uncertainty.

IV. The Extensions Meet the Requirements of §§ 3130.6(a), (b), and (c)

In addition to the good cause describe above, further factors support the approval of the requested extensions as described below.

A. Extension Request Served on All Parties to the Application

In the instant case, this extension request is being served simultaneously on all parties to the original applications for BZA Case Nos. 17600 and 17606. All parties to the application will be allowed thirty (30) days to respond to this request. Further, just as the initial relief of BZA Order Nos. 17600 and 17606 and the extension of such orders by BZA Order Nos. 17600-A and 17606-B did not prejudice the rights of any party, the extension of the Orders will not prejudice any party. There are no neighbors or structures that would be adversely affected as the result of the loading variance relief under BZA Order Nos. 17600 and 17600-A or the special exception relief for the varying heights of the roof structure under BZA Order Nos. 17606 and 17606-B. In

fact, since the projects proposed are part of an area-wide project benefiting the local community and revitalizing the South Dakota Avenue and Riggs Road intersection, the effects on the neighbors and community would be positive if the Orders are extended. An adverse effect would likely result from allowing the Orders to expire. Further, there are no prohibitions under D.C. laws that would disallow the extension of the Orders as requested.

B. No Substantial Change to Any of the Material Facts

The factors satisfying the variance standards and allowing for the special exception relief for the Properties remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case.

Regarding the variance relief under BZA Order No. 17600, the exceptional, unique conditions of the Fort Totten North property remain, such as the odd configuration of the lot and the slope issues. Similarly, the practical difficulty that would be created by the strict application of the Zoning Regulations remains. Fort Totten North, LLC would still face infeasible or unnecessary construction if the Zoning Regulations were strictly enforced, requiring the full sized loading berth. Finally, the Zone Plan would still not be harmed through the approval of the requested relief since the project on Fort Totten North and related relief would enact policies desired by the Zoning Regulations and Comprehensive Plan. That project would improve the area and allow a more efficient use of the Fort Totten North property.

Regarding the special exception relief under BZA Order No. 17606, the roof structure relief is still in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

C. Conformance with the Comprehensive Plan and Zoning Regulations

This request for a waiver for good cause shown under § 3100.5 of the Zoning Regulations for an extension of time within which to complete the projects on the Properties is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 31 of the Zoning Regulations, and the District of Columbia Comprehensive Plan (“**Plan**”) for the National Capital. The Land Use Map of the Plan designates the site for Moderate Density Commercial use. The Plan’s land use designation of the Property has not changed since the Orders were approved. Further, the Plan’s policies and goals still support the projects on the Properties, and would support an extension of time for both Orders.

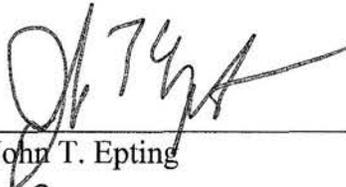
V. Waiver from § 3130.9, if applicable

If § 3130.9 is deemed to require that a waiver request such as the instant request is to be filed at least (30) days prior to the date of expiration of the Orders, we also request a waiver from § 3130.9.

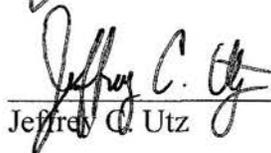
Enclosed please find a check for \$560.00. This amount represents the filing fee for extensions under § 3180.1(f). Such amount is calculated as twenty percent of the initial filing for BZA Case No. 17600 (\$800) and for BZA Case No. 17606 (\$2,000). Therefore, the filing fee for this extension request is \$160 and \$400, respectively.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. T. Epting", written over a horizontal line.

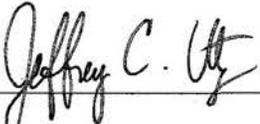
John T. Epting

A handwritten signature in black ink, appearing to read "Jeffrey C. Utz", written over a horizontal line.

Jeffrey C. Utz

Certificate of Service

I certify that on March 8, 2011, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeffrey C. Utz

Jennifer Steingasser
Office of Planning
1100 4th Street, S.W., Suite E650
Washington, D.C. 20024

ANC 4B (9 copies)
6856 Eastern Avenue, N.W. #316
Washington, D.C. 20012

Douglass Sloan
313 Nicholson Street, N.E.
Washington, D.C. 20011



THE JBG COMPANIES

FORT TOTTEN NORTH, LLC
4445 WILLARD AVENUE SUITE 400
CHEVY CHASE, MD 20815
240-333-3600

PNC Bank NA 040
Washington, DC

15-3/540

DATE
03/08/2011

CHECK NO.
46200030

AMOUNT
\$560.00*****

Pay: **** FIVE HUNDRED SIXTY AND 00/100 DOLLARS

PAY
TO THE
ORDER OF

DC Treasurer

Case #
17000 A & 17606B



AUTHORIZED SIGNATURE

Emergency Request Waiver to Expedite Orders

A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17600 of Dakota Square LLC, pursuant to 11 DCMR § 3102.2, for a variance from the loading berth requirements under subsection 2201.1, to allow the construction of a mix-use (commercial/residential) building in the C-2-A District at premises 300-320 Riggs Road, N.E. (Square 3748, Lot 52).

HEARING DATE: March 20, 2007
DECISION DATE: March 20, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3102.2, for a variance from § 2201.1. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, (2201.1) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

BZA APPLICATION NO. 17600

PAGE NO.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **3-0-2** (Curtis L. Etherly, Jr., John A. Mann II and Michael G. Turnbull to grant; Geoffrey H. Griffis and Ruthanne G. Miller not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY: 
JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: **MAR 21 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT

BZA APPLICATION NO. 17600

PAGE NO.

OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17600

As Director of the Office of Zoning, I hereby certify and attest that on MAR 21 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John T. Epting, Esquire
Jeffrey C. Utz, Esquire
Pillsbury Winthrop Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037-1128

Jeff Miller
Dakota Square, LLC
c/o Lowe Enterprises
1101 Connecticut Avenue, N.W., Suite 250
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Box 314
Washington, D.C. 20011

Single Member District Commissioner 4B09
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Box 314
Washington, D.C. 20011

Bill Crews, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

City Councilmember
Ward 4
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17600

PAGE NO. 2

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17600-A of Dakota Square LLC, pursuant to 11 DCMR §3103.2, for a variance from the loading berth requirements under subsection 2201.1, to allow the construction of a mix-use (commercial/residential) building in the C-2-A District at premises 300-320 Riggs Road, N.E. (Square 3748, Lot 52).

Hearing Date:	March 20, 2007
Decision Date:	March 20, 2007
Final Date of Order:	March 21, 2007
Decision on Motion to Extend Order:	March 24, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER 17600

The Underlying BZA Order

On March 20, 2007, the Board approved the Applicant's request for a variance from the loading berth requirements under subsection 2201.1 of the Zoning Regulations. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on March 21, 2007 (BZA Order 17600).

Under the Summary Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until March 21, 2009.

Section 3130.1 states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1)

Motion to Extend

On March 6, 2009, the Board received a letter from the Applicant indicating that it had not yet applied for a building permit, and that it would not be able to do so prior to March 21, 2009 when the Order was set to expire. According to the Applicant, despite strong efforts, “the Property Owners ha[d] not been able to a[cquire] financing which would allow the preparation of construction plans and the filing of their building permit applications.” The Applicant asserted that this was due to the unprecedented negative economic circumstances impacting development in the District of Columbia in general.

Accordingly, the Applicant requested that:

- A. Pursuant to § 3100.5 of the Regulations, the Board waive the provisions of § 3130.1, which limits the validity of the underlying Order to two years from the date of its issuance, thereby allowing the Applicant additional time to apply for a building permit; **or**,
- B. The Board extend the underlying Order for a period of two years from March 21, 2009.
- C. The Board toll the expiration date for the underlying Order from the date the motion to extend was filed.

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

(11 DCMR § 3100.5)

The Board finds that the Applicant has met the criteria set forth in this provision. The Applicant’s inability to secure financing and the poor economic conditions in the District constitutes the “good cause” required under § 3100.5. The Board also finds that a waiver in this case would not prejudice the rights of any party and is not otherwise prohibited by law. Neither the ANC nor any nearby property owners objected to an extension of the Order; and as noted above, there were no opposing parties at the time the underlying Order was decided. Since granting the initial request for relief did not prejudice the rights of any party, the Board concludes that the extension of that relief, likewise, will not be prejudicial.

Regarding the Applicant’s request to toll the expiration of the underlying Order, the Board finds that the expiration was tolled at the time the Applicant’s motion was filed.

BZA APPLICATION NO. 17600-A
PAGE NO. 3

Accordingly, the Board hereby waives the limitation in § 3130.1 of the Regulations and extends the validity of the underlying Order for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of March 21, 2011.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until March 21, 2011.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, and Shane L. Dettman to approve; Michael G. Turnbull to approve by absentee ballot; Mary Oates Walker not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:



RICHARD S. NERO, JR.
Acting Director, Office of Zoning

APR 07 2009

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

BZA APPLICATION NO. 17600-A
PAGE NO. 4

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17600-A

As Director of the Office of Zoning, I hereby certify and attest that on APRIL 7, 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

John T. Epting, Esquire
Jeffrey C. Utz, Esquire
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Jeff Miller
Dakota Square, LLC
c/o Lowe Enterprises
1101 Connecticut Avenue, N.W., Suite 250
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Single Member District Commissioner 4B09
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Muriel Bowser, Councilmember
Ward Four
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17600-A
PAGE NO. 2

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



RICHARD S. NERO, JR.
Acting Director, Office of Zoning

B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17606 of Dakota Points LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under section 411, to construct a four (4) unit residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

HEARING DATE: May 8, 2007
DECISION DATE: May 8, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 411. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17606

PAGE NO. 2

affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 11 – Plans) be **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Marc D. Loud and John A. Mann II to Approve, Curtis L. Etherly, Jr. and the Zoning Commission member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: May 9, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17606

As Director of the Office of Zoning, I hereby certify and attest that on May 9, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John T. Epting, Esq.
Jeffrey C. Utz, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Single Member District Commissioner 4B09
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Muriel Bowser, City Councilmember-Elect
Ward Four
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Bill Crews, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E. # 2000
Washington, D.C. 20002

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17606
PAGE NO. 2

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsu

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

✍

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17606-A of Dakota Points LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under section 411, to construct a four (4) story residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

HEARING DATE: May 8, 2007
DECISION DATE: May 8, 2007 (Bench Decision)

CORRECTED SUMMARY ORDER

Note: This order corrects BZA Order No. 17606, as indicated by the underlined text in the above paragraph.

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 411. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411, that the requested relief can be granted as

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17606-A
PAGE NO. 2

being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 11 – Plans) be **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Marc D. Loud and John A. Mann II to Approve, Curtis L. Etherly, Jr. and the Zoning Commission member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: May 9, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR

BZA APPLICATION NO. 17606-A
PAGE NO. 3

ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17606-A

As Director of the Office of Zoning, I hereby certify and attest that on May 9, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John T. Epting, Esq.
Jeffrey C. Utz, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Single Member District Commissioner 4B09
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Muriel Bowser, City Councilmember-Elect
Ward Four
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Bill Crews, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E. # 2000
Washington, D.C. 20002

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17606-A
PAGE NO. 2

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning *d*

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17606-B of Dakota Points LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under section 411, to construct a four-story residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

Hearing Date:	May 8, 2007
Decision Date:	May 8, 2007
Final Date of Order:	May 9, 2007
Decision on Motion to Extend Order:	March 24, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER 17606-A

The Underlying BZA Order

On May 8, 2007, the Board approved the Applicant's request for a special exception from the roof structure requirements of § 411 of the Zoning Regulations. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on May 9, 2007 (BZA Order 17606). Because of a minor error in the caption of this Order, the Board issued a Corrected Summary Order (17606-A), to accurately reflect that the proposal was for a 4-*story* residential building, and not a four *unit* residential building. The Corrected Summary Order was also dated May 9, 2007.

Under the Corrected Summary Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until May 9, 2009.

Section 3130.1 states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1)

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

Motion to Extend

On March 6, 2009, the Board received a letter from the Applicant indicating that it had not yet applied for a building permit, and that it would not be able to do so prior to May 9, 2009 when the Order was set to expire. According to the Applicant, despite strong efforts, “the Property Owners ha[d] not been able to a[cquire] financing which would allow the preparation of construction plans and the filing of their building permit applications.” The Applicant asserted that this was due to the unprecedented negative economic circumstances impacting development in the District of Columbia in general.

Accordingly, the Applicant requested that:

- A. Pursuant to § 3100.5 of the Regulations, the Board waive the provisions of § 3130.1, which limits the validity of the underlying Order to two years from the date of its issuance, thereby allowing the Applicant additional time to apply for a building permit; **or**,
- B. The Board extend the underlying Order for a period of two years from May 9, 2009.
- C. The Board toll the expiration date for the underlying Order from the date the motion to extend was filed.

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

(11 DCMR § 3100.5)

The Board finds that the Applicant has met the criteria set forth in this provision. The Applicant’s inability to secure financing and the poor economic conditions in the District constitutes the “good cause” required under § 3100.5. The Board also finds that a waiver in this case would not prejudice the rights of any party and is not otherwise prohibited by law. Neither the ANC nor any nearby property owners objected to an extension of the Order; and as noted above, there were no opposing parties at the time the underlying Order was decided. Since granting the initial request for relief did not prejudice the rights of any party, the Board concludes that the extension of that relief, likewise, will not be prejudicial.

Regarding the Applicant’s request to toll the expiration of the underlying Order, the Board finds that the expiration was tolled at the time the Applicant’s motion was filed.

BZA APPLICATION NO. 17606-B
PAGE NO. 3

Accordingly, the Board hereby waives the limitation in § 3130.1 of the Regulations and extends the validity of the underlying Order for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of May 9, 2011.

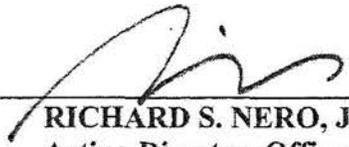
Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until May 9, 2011.

VOTE: 3-0-2 (Ruthanne G. Miller, Marc D. Loud, and Shane L. Dettman to approve; Mary Oates Walker not participating, not voting; and no member of the Zoning Commission participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: APR 07 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

BZA APPLICATION NO. 17606-B
PAGE NO. 4

AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG/TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



BZA APPLICATION NO. 17606-B

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 7, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

John T. Epting, Esq.
Jeffrey C. Utz, Esq.
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Chairperson
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Single Member District Commissioner 4B09
Advisory Neighborhood Commission 4B
6856 Eastern Avenue, N.W., Suite 314
Washington, D.C. 20011

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Muriel Bowser, Councilmember
Ward Four
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

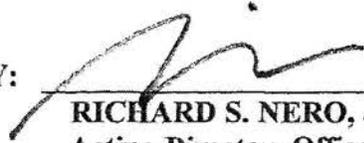
E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17606-B
PAGE NO. 2

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in black ink, appearing to read "R. Nero, Jr.", is written over a horizontal line.

RICHARD S. NERO, JR.
Acting Director, Office of Zoning

c

LAND DISPOSITION AGREEMENT

Between

**DISTRICT OF COLUMBIA,
a municipal corporation
("District")**

and

**DAKOTA TRIANGLE, LLC,
a Delaware limited liability company
("Developer")**

Dated as of December 19, 2008

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS 4

ARTICLE 2 CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY..... 36

 2.1 SALE; PURCHASE PRICE; DISPOSITION FEE..... 36

 2.2 DEPOSIT 37

 2.3 CONDITION OF PROPERTY 39

 2.4 TITLE..... 44

 2.5 RISK OF LOSS..... 47

 2.6 CONDEMNATION 47

 2.7 SERVICE CONTRACTS AND LEASES 47

 2.8 FEASIBILITY PERIOD 47

 2.9 SECURITY FOR PERFORMANCE..... 47

ARTICLE 3 REPRESENTATIONS AND WARRANTIES 47

 3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT..... 47

 3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER 47

**ARTICLE 4 CONSTRUCTION DRAWINGS; UTILITY DESIGN WORK;
DEVELOPER’S PRECLOSING COVENANTS**..... 47

 4.1 CONSTRUCTION DRAWINGS 47

 4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS 47

 4.3 CHANGES IN FINAL PROJECT PLANS AND SPECIFICATIONS 47

 4.4 PROGRESS MEETINGS/CONSULTATION 47

 4.5 PROVISIONS TO BE INCLUDED IN COVENANTS 47

 4.6 SCHEDULE OF PERFORMANCE EXTENSION REQUESTS..... 47

 4.7 UTILITY DESIGN WORK..... 47

 4.8 PROJECT BUDGET; MAJOR SUBCONTRACTS 47

 4.9 DEVELOPER’S FUNDING FOR THE PROJECT. 47

ARTICLE 5 CONDITIONS TO CLOSING..... 47

 5.1 CONDITIONS PRECEDENT TO DEVELOPER’S OBLIGATION TO CLOSE 47

 5.2 CONDITIONS PRECEDENT TO DISTRICT’S OBLIGATION TO CLOSE 47

ARTICLE 6 CLOSING 47

 6.1 CLOSING DATE..... 47

 6.2 DELIVERIES AT CLOSING 47

 6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS 47

ARTICLE 7 DEVELOPMENT OF PROJECT 47

 7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS 47

 7.2 ISSUANCE OF PERMITS 47

 7.3 SITE PREPARATION..... 47

ARTICLE 8 COVENANTS AND RESTRICTIONS..... 47

 8.1 CONSTRUCTION AND USE COVENANT..... 47

 8.2 AFFORDABILITY COVENANT 47

 8.3 DESIGN REVIEW COVENANT..... 47

 8.4 OPPORTUNITY FOR CBEs..... 47

 8.5 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT 47

 8.6 PROFIT SHARING AGREEMENT..... 47

ARTICLE 9 DEFAULTS AND REMEDIES	47
9.1 DEFAULT.....	47
9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER	47
9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT	47
9.4 NO WAIVER BY DELAY; WAIVER.....	47
9.5 RIGHTS AND REMEDIES.....	47
ARTICLE 10 TRANSFER AND ASSIGNMENT	47
10.1 ASSIGNMENT.....	47
10.2 NO UNREASONABLE RESTRAINT.....	47
ARTICLE 11 INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION	47
11.1 INSURANCE OBLIGATIONS	47
11.2 CASUALTY	47
11.3 INDEMNIFICATION.....	47
ARTICLE 12 NOTICES	47
12.1 TO DISTRICT	47
12.2 TO DEVELOPER	47
12.3 NOTICES DEEMED RECEIVED; CHANGE OF NOTICE ADDRESS.....	47
ARTICLE 13 MISCELLANEOUS	47
13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS.....	47
13.2 FORCE MAJEURE	47
13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE	47
13.4 INTENTIONALLY DELETED.....	47
13.5 TITLES OF ARTICLES AND SECTIONS	47
13.6 SINGULAR AND PLURAL USAGE; GENDER.....	47
13.7 LAW APPLICABLE; FORUM FOR DISPUTES.....	47
13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS	47
13.9 COUNTERPARTS	47
13.10 TIME OF PERFORMANCE	47
13.11 SUCCESSORS AND ASSIGNS	47
13.12 THIRD PARTY BENEFICIARY	47
13.13 WAIVER OF JURY TRIAL.....	47
13.14 FURTHER ASSURANCES.....	47
13.15 MODIFICATIONS AND AMENDMENTS	47
13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY	47
13.17 SEVERABILITY	47
13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE	47
13.19 NO PARTNERSHIP	47
13.20 PATRIOT ACT	47
13.21 ESTOPPEL CERTIFICATE.....	47
13.22 PROJECT FINANCING.....	47
13.23 SURVIVAL.....	47

EXHIBITS

- Exhibit A Plat Showing Approximate Location of Property
- Exhibit B Form of Special Warranty Deed
- Exhibit C Form of Affordability Covenant
- Exhibit D Form of Construction Covenant
- Exhibit E-1 Form of Dakota Square Design Review Covenant
- Exhibit E-2 Form of Dakota Points Design Review Covenant
- Exhibit F Form of Deposit Letter of Credit
- Exhibit F-1 Form of Performance Letter of Credit
- Exhibit G Form of Development and Completion Guaranty
- Exhibit H Schedule of Performance
- Exhibit I-1 Concept Plans for the Project
- Exhibit I-2 Concept Plans for the Developer-Owned Properties
- Exhibit J Form of Acknowledgment of Boundaries
- Exhibit J-1 Depiction of Easements and Utilities to be Relocated
- Exhibit K Form of Escrow Agreement
- Exhibit L Milestones for Reductions in the Performance Letter of Credit
- Exhibit M Utility Design Work Contract
- Exhibit N Form of Compliance Form

EXHIBITS

- Exhibit A Plat Showing Approximate Location of Property
- Exhibit B Form of Special Warranty Deed
- Exhibit C Form of Affordability Covenant
- Exhibit D Form of Construction Covenant
- Exhibit E-1 Form of Dakota Square Design Review Covenant
- Exhibit E-2 Form of Dakota Points Design Review Covenant
- Exhibit F Form of Deposit Letter of Credit
- Exhibit F-1 Form of Performance Letter of Credit
- Exhibit G Form of Development and Completion Guaranty
- Exhibit H Schedule of Performance
- Exhibit I-1 Concept Plans for the Project
- Exhibit I-2 Concept Plans for the Developer-Owned Properties
- Exhibit J Form of Acknowledgment of Boundaries
- Exhibit J-1 Depiction of Easements and Utilities to be Relocated
- Exhibit K Form of Escrow Agreement
- Exhibit L Milestones for Reductions in the Performance Letter of Credit
- Exhibit M Utility Design Work Contract
- Exhibit N Form of Compliance Form

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**") is made effective for all purposes as of the 19th day of December, 2008, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) DAKOTA TRIANGLE, LLC, a Delaware limited liability company ("**Developer**").

RECITALS:

R-1. District owns the parcels of land located at the southeast corner of the intersection of South Dakota Avenue, N.E., and Riggs Road, N.E., in Washington, D.C., known as Parcel 125-30, consisting of approximately 112,414 square feet of land area (the "**District Parcel**"). District acquired the District Parcel by eminent domain for road construction purposes. The D.C. Department of Transportation has determined that the District Parcel is no longer needed for road construction purposes, as approved by the Federal Highway Administration.

R-2 District intends to sell to Developer a portion of the District Parcel (such portion, the "**Property**"); as shown approximately on the plat attached hereto as Exhibit A and as to be identified more particularly, as hereinafter described, during the Feasibility Period (hereinafter defined).

R-3. Finding that the Property was no longer required by the District of Columbia for public purposes, the Council of the District of Columbia ("**Council**") approved the disposition of the Property to Developer on July 11, 2006, pursuant to the South Dakota Avenue-Riggs Road Excess Property Emergency Approval Resolution of 2006, Resolution 16-0747 (the "**Original Resolution**"), subject to the terms and conditions set forth therein and incorporated herein by this reference. The Council approved the Riggs Road Disposition Extension Approval Resolution of 2008, Resolution 17-0678, on July 1, 2008 (the "**Updated Resolution**"), which extended the approval of the disposition until July 11, 2011. The Original Resolution and the Updated Resolution are hereinafter together referred to as the "**Resolution**."

R-4. The Property will be part of a larger development involving the real property located at 300-320 Riggs Road, N.E. (Lot 0052 in Square 3748), and 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), which properties (the "**Developer-Owned Properties**") are owned by affiliates of Developer and will be developed by Dakota Square, LLC, and Dakota Points, LLC, respectively. At Closing (hereinafter defined), Developer will cause the owner(s) of the fee interest in the Developer-Owned Properties (the "**Developer Parties**") to execute and enter into the Design Review Covenants, the forms of which are attached hereto as Exhibits E-1 and E-2, each of which shall be recorded against the applicable Developer-Owned Property, in order to subject the Developer-Owned Properties to those terms and conditions hereof expressly applicable to the Developer-Owned Properties.

R-5. The Project (hereinafter defined) to be developed on the Property is not a public building or public work, but rather is a private development intended to stimulate the economy and growth of the neighborhood and community in which the Property is located. However, the Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the

Project necessary and appropriate for an urban development serving District of Columbia residents and the public at large. Developer and District further desire and intend that Developer develop the Project on the Property without any District of Columbia or federal government financing, subsidy or assistance, including in the operation of the affordable housing component of the Project and in the CBE (defined below) involvement in the Project; provided, however, District shall have a continuing oversight role in the development and construction of the Project for the purposes of assuring the excellence and integrity of the design, construction, and management of the Project in accordance with the plans approved by District and enforcing the terms and conditions of this Agreement; however, Developer shall not look to District for any assistance in the Project.

R-6. As a condition of District conveying the Property to Developer, Developer and the Developer Parties are required to grant District certain design review over the Master Development. It is contemplated that the Project is a matter-of-right development under the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), although the portion of the Master Development to be constructed on the Developer-Owned Properties will require relief from the Board of Zoning Adjustment (“BZA”). Specifically, the Developer-Owned Property at 300-320 Riggs Road, N.E. (Lot 0052 in Square 3748), is subject to BZA Order No. 17600, which grants variance relief from residential loading berth size requirements, and the Developer-Owned Properties at 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), are subject to BZA Order No. 17606-A, which grants special exception relief for the varying heights of the proposed buildings’ roof structure.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, District and Developer do hereby agree as follows, to wit:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Acknowledgment**” is defined in Section 2.8.1.

“**Acknowledgment Date**” means the date on which the Acknowledgment is executed by the Parties.

“**Affiliate**” means with respect to any Person (“first Person”) (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

“**Affordability Covenant**” is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as Exhibit C, to be recorded in the Land Records against the Property in connection with Closing.

“**Affordable Unit**” means each unit to be developed, rented or sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

“**Approved Plans and Specifications**” is defined in Section 4.2.1.

“**Architect**” means Hickok Cole Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

“**Base Amount**” shall mean Four Hundred Fifty Dollars (\$450.00)

“**Bonds**” is defined in Section 2.9.1.

“**Business Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

“**Capital Event**” means:

(1) the sale, disposition, assignment, conveyance, exchange, or other similar transaction by Developer of all or a portion of the Rental Residential Units in the Project, at any stage of construction or completion of the Project, including, without limitation, any refinancing or other transfer of the Project or any part thereof by Developer, to one or more Persons, whether by means of a conveyance of title or, in one or a series of related transactions, a transfer of greater than 50% of the direct or indirect interests in Developer, provided that the following shall not be Capital Events under this definition:

(a) loans to finance the initial construction of the Project or any part thereof;

(b) so called “mezzanine” loans secured by a pledge of direct or indirect ownership interests in Developer;

(c) transfers described in Section 10.1 (a) of this Agreement;

(d) transfers of interests in Lowe Enterprises, Inc., including transfers arising from Lowe Enterprises, Inc., as a company, being acquired; and

(e) provided that Lowe Enterprises, Inc., or its successor if Lowe Enterprises, Inc., as a company is acquired, still Controls Developer, transfers of as much as one hundred percent (100%) of the direct or indirect interests in Developer; and

(2) except as otherwise expressly excluded from this definition pursuant to clauses 1(a) through 1(e) above, and excluding the replacement or sale of capital equipment in the ordinary course of the development and operation of the Property, any other transactions by Developer with respect to its right, title, or interests in or to the Property that would be reasonably

characterized either as a capital event or capital transaction under generally accepted accounting principles.

“Capital Event Proceeds” means all proceeds from: (1) a Capital Event if and to the extent allocable to the portion of the Capital Event relating to the Rental Residential Units, or relevant portion thereof, but net of: (a) the payoff of any Mortgages; (b) transactional costs (including normal and customary fees to any Affiliate of Developer) paid by Developer in connection with such Capital Event; (c) any unrelated business income tax or other comparable tax obligations arising with respect to the income of Developer that are imposed by any federal, state or District of Columbia laws and payable by Developer; and (d) such proceeds as are used to pay the reasonable costs paid by Developer to improve, restore or repair the Project, to the extent that such costs are neither paid from reserves nor received or reimbursed from insurance, tenants, general contractors, or any other Person having any liability or other legal obligation to reimburse Developer therefor; and (2) condemnation and insurance settlements (excluding any proceeds of rent interruption, business interruption, or similar loss of income insurance) for the condemnation or destruction of the Project in whole or in substantial part, but net of: (x) the payoff of any Mortgages; (y) the reasonable costs paid by Developer in connection with such condemnation or casualty, including but not limited to any unrelated business income tax or other comparable tax obligations arising with respect to such condemnation or casualty payable by Developer; and (z) such proceeds as are used to pay the reasonable costs paid by Developer to restore the Project, to the extent that such costs are neither paid from reserves nor received or reimbursed from insurance, tenants, general contractors, or any other Person having any liability to reimburse Developer therefor.

“Cash Deposit” is defined in Section 2.2.1.

“CBE” means a certified business enterprise, certified as a “CBE” by the DSLBD under applicable District of Columbia law.

“CBE Agreement” is that agreement, in customary form, between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

“CBE Requirements” is defined in Section 8.4.2.

“Certificate of Final Completion” is defined in Section 8.1.1(f).

“Certificate of Substantial Completion” means that certificate provided by the Architect to District upon Completion of Construction, as required under Section 8.1.1(e).

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Master Development Improvements or any portion thereof.

“Closing” is the consummation of the purchase and sale of the Property as contemplated by this Agreement.

“Closing Date” is defined in Section 6.1.1.

“Commencement of Construction” means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation, and (iv) obtained the Permits required for excavation, sheeting and shoring and commenced excavation upon the Property pursuant to the Final Project Plans and Specifications. For purposes of this Agreement, the term “Commencement of Construction” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Master Development Improvements thereon or the investigations of environmental conditions.

“Commitment Letters” is defined in Section 4.9.2.

“Completion of Construction” means, with respect to the Project or any portion thereof, (i) Developer has substantially completed construction of the Project or such portion thereof, exclusive only of Punch List Items and any interior fit-up in the nature of tenant improvements, in accordance with the Final Project Plans and Specifications and the Construction Covenant; (ii) Developer’s general contractor is entitled to final payment under the construction contract for the Project or such portion thereof exclusive only of any retainage held on account of Punch List Items; (iii) Developer has provided District with a copy of the Certificate of Substantial Completion for the Project or such portion thereof; and (iv) a permanent Certificate of Occupancy has been issued for the Project or such portion thereof.

“Compliance Form” is defined in Section 8.1.1(i).

“Concept Plans” are Developer’s design plans for the Project or the Master Development, as the context may require, which serve the purpose of establishing the major direction of the design of the Project and/or the Master Development, as applicable, and any modifications thereto permitted pursuant to this Agreement. The Concept Plans for the Project will be attached hereto as Exhibit I-1 after approval thereof by District in accordance with Sections 4.1.1 and 4.2. The Concept Plans for the portions of the Master Development on the Developer-Owned Properties will be attached hereto as Exhibit I-2 after approval thereof by District in accordance with Sections 4.1.2 and 4.2.

“Condominium Base Return” shall mean the mathematical product of: (i) the Base Amount, as increased or decreased on a year-to-year basis as of each anniversary date of the Effective Date, up to the time of closing of the sale of the Condominium Residential Unit, by an amount equal to the CPI Adjustment (Condominium), multiplied by (ii) the saleable square footage of the Condominium Residential Unit.

“Condominium Residential Unit” is defined in Section 8.6.1.

“Construction Covenant” is that certain Construction Covenant between District and Developer in the form attached hereto as Exhibit D, to be recorded in the Land Records against the Property in connection with Closing.

“**Construction Drawings**” is defined in Section 4.1.1.

“**Construction Plans and Specifications**” means the detailed architectural drawings and specifications that are prepared for all aspects of the Master Development or the Project, as applicable, in accordance with the approved Design Development Plans for the Master Development or the Project, as applicable, and that are used to obtain Permits and detailed cost estimates, and to solicit and receive construction bids.

“**Contaminant Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers, and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

“**Control**” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day operations or the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person. The terms “**Control**,” “**Controlling**,” “**Controlled by**” or “**under common Control with**” shall have meanings correlative thereto.

“**Council**” is defined in the Recitals.

“**CPI**” means Consumer Price Index for Urban Wage Earners and Clerical Workers, November 1996 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI shall be discontinued, District shall select a substitute index, subject to Developer’s reasonable and timely approval, being an existing official index published by the Bureau of Labor Statistics or its successor or another, similar governmental agency, which index is most nearly equivalent to the CPI.

“**CPI Adjustment (Condominium)**” shall mean the product of (1) the percentage increase or decrease in the CPI in each year prior to the sale of a Condominium Residential Unit by Developer (based on the difference between (a) the CPI which shall have been published most recently prior to either the Effective Date or the immediately prior anniversary date of the Effective Date, as applicable, and (b) the CPI which shall have been published most recently prior to the date of such sale), multiplied by (2) the Base Amount as increased or decreased as of each such prior anniversary date.

“**CPI Adjustment (Rental)**” shall mean the product of (1) the percentage increase or decrease in the CPI in each year prior to a Capital Event (based on the difference between (a) the CPI which shall have been published most recently prior to either the Effective Date or the immediately prior anniversary date of the Effective Date, as applicable, and (b) the CPI which shall have been published most recently prior to the date of such Capital Event), multiplied by (2) the Base Amount as increased or decreased as of each such prior anniversary date.

“**Damages Deposit**” is defined in Section 9.2(a).

“**DDOT**” means the District of Columbia Department of Transportation.

“**Deed**” means the special warranty deed conveying the Property to Developer at Closing in the form of Exhibit B attached hereto and incorporated herein by reference.

“**Deposit**” shall mean either the Cash Deposit or the Deposit Letter of Credit, as the context may require.

“**Deposit Letter of Credit**” is defined in Section 2.2.2.

“**Design Development Plans**” are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Master Development or the Project, as applicable, at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

“**Design Review Covenant**” means, collectively, that certain Design Review Covenant between District and Dakota Square, LLC, and that certain Design Review Covenant between District and Dakota Points, LLC, in the forms attached hereto as Exhibit E-1 and Exhibit E-2, respectively, which give District certain rights to review and approve the construction plans and drawings and to monitor the construction of the portions of the Master Development to be constructed on the Developer-Owned Properties, each to be recorded in the Land Records against the applicable Developer-Owned Property in connection with Closing.

“**Developer Default**” is defined in Section 9.1.2.

“**Developer-Owned Properties**” is defined in the Recitals.

“**Developer Parties**” is defined in the Recitals.

“**Developer’s Agents**” means Developer’s agents, employees, consultants, contractors, and representatives.

“**Developer’s Financing Statement**” is defined in Section 4.9.1.

“**Development and Completion Guaranty**” is that guaranty, the form of which is attached hereto as Exhibit G, to be executed by Guarantor in connection with Closing.

“**Development Plan**” means Developer’s detailed plans for developing, constructing, financing, using, and operating the Master Development or the Project, as applicable, in the form and substance required under Section 4.1.

“**Disapproval Notice**” is defined in Section 4.2.2.

“**Disposition Fee**” is defined in Section 2.1.3.

“**District Default**” is defined in Section 9.1.3.

“**District Parcel**” is defined in the Recitals.

“**DOES**” is the District of Columbia Department of Employment Services, or such successor District agency.

“**DOL**” is the United States Department of Labor.

“**DSLBD**” is the District of Columbia Department of Small and Local Business Development, or such successor District agency.

“**Due Diligence, Pre-Development and Contract Costs**” means, collectively and in the aggregate, reasonable out-of-pocket costs and expenses (including reasonable attorneys’ and accountants’ fees and related expenses) up to a maximum amount of \$750,000 that are incurred by Developer in connection with (i) Developer’s Studies (including costs and expenses for title examination and for the preparation of surveys, environmental studies and other third party reports), (ii) the design and planning of the Project, including architectural and engineering fees and the fees of other professionals involved in the preparation of the Schematic Plans, Design Development Plans, and other Construction Drawings, and (iii) the preparation and negotiation of this Agreement, the exhibits attached hereto and the documents to be executed pursuant hereto, but expressly excluding costs incurred by Developer in connection with the Utility Design Work.

“**Effective Date**” is the date first written above, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties to this Agreement shall have executed and delivered this Agreement to one another.

“**Environmental Claims**” is defined in Section 8.1.3(a).

“**Environmental Law**” means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“**Escrow Agreement**” means that certain Escrow Agreement between District, Developer and Settlement Agent in the form attached hereto as Exhibit K, which shall be executed as of the Effective Date.

“**Estoppel Recipient**” shall have the meaning set forth in Section 13.21.

“Feasibility Period” means the period beginning on the Effective Date and continuing until the date that occurs one hundred fifty (150) days after the Effective Date, subject to extension as provided in Section 2.8.

“Final Completion” means following Completion of Construction (i) the completion of all Punch List Items in the Project or relevant portion thereof; (ii) the close-out of all construction contracts for the Project or relevant portion thereof; (iii) the payment of all costs of constructing the Project or relevant portion thereof and receipt by Developer of fully executed and notarized valid releases of liens from all first-tier subcontractors (except from subcontractors, if any, involved in payment disputes with Developer) for work performed on the Project or relevant portion thereof; provided that in the event either lien waivers are not obtained or liens are filed, Developer shall bond or insure over any liens filed within a reasonable period of time; and (iv) the receipt by District of a Certificate of Final Completion.

“Final Project Plans and Specifications” shall have the meaning set forth in Section 4.3.1.

“First Source Agreement” is that agreement, in customary form, between Developer and DOES, entered into in accordance with Section 8.5 herein, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93, and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

“Force Majeure” is an act or event, including, as applicable, an act of God, acts of terror or terrorism, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders or acts or failures to act of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of Developer, Developer’s Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer’s Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by Developer, Developer’s Agents, or its Members or District in the event District’s claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Final Project Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer’s Agents or Members.

“Foreclosure” shall have the meaning set forth in Section 13.22.2.

“Guarantor” is Lowe Enterprises, Inc., or any substitute guarantor approved by District pursuant to Section 2.9.2.

“Guarantor Submissions” shall mean the most recent audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a Person as District may reasonably request, together

with a summary of such Person's other guaranty obligations and the other contingent obligations of such Person (in each case, certified by such Person or an officer of such Person as being true, correct and complete in all material respects); provided, however, that if audited financial statements and/or audited balance sheets are not prepared in the ordinary course of such Person's business, the financial statements and balance sheets referred to in this definition may be unaudited.

"Hazardous Materials" means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic materials," "contamination," or "pollution" within the meaning of any Environmental Law.

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

"Indemnified Parties" are defined in Section 8.1.3(a).

"Institutional Lender" means a Person that (a) lends money to or invests in real estate developers or developments in the ordinary course of its business, (b) is not an Affiliate of Developer or a Prohibited Person, (c) has an aggregate of no less than \$1 billion in assets, and (d) is (i) a commercial bank, investment bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company (such as GE Commercial Finance); (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (vii) a governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; (ix) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds, or (x) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing when acting as trustee for other lender(s) or investor(s) that are not Prohibited Persons, whether or not such other lender(s) or investor(s) are themselves Institutional Lenders). A holder of a bond issued by a governmental agency that is an Institutional Lender shall be deemed to be an Institutional Lender solely for purposes of determining whether such holder, as owner of an interest in the debt issued by such governmental agency, is an Institutional Lender.

"Land Records" means the property records maintained by the Recorder of Deeds for the District of Columbia.

“**Laws**” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historical preservation, and laws relating to accessibility for persons with disabilities.

“**Major Subcontract**” shall mean each subcontract for construction services for the Project with a contract price that is \$250,000 or more.

“**Mandatory Cure Items**” are defined in Section 2.4.1.

“**Master Development**” is the mixed-use development to be constructed in accordance with a master plan on the Property and Developer-Owned Properties. The Project is a portion of the Master Development.

“**Master Development Improvements**” mean landscaping, hardscape, and improvements to be constructed or placed on the Property and Developer-Owned Properties in accordance with the Development Plans and Approved Plans and Specifications therefor; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Master Development Improvements be deemed included in the term “Master Development Improvements” as used in this Agreement.

“**Material Adverse Change**” means a material adverse change (in comparison to any state of affairs existing before the Effective Date) (i) to the business operations, assets or condition (financial or otherwise) of Guarantor, and (ii) that affects the ability of Guarantor to perform, or of District to enforce, any material provision of the Development and Completion Guaranty after Closing.

“**Material Change**” means (i) any change in size or design from the Final Project Plans and Specifications affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, or a five percent (5%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Final Project Plans and Specifications; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Final Project Plans and Specifications; (iv) any changes in design and construction of the Project requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (v) any change affecting the general appearance of landscape design or plantings from the Final Project Plans and Specifications; (vi) any change affecting the general appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the Project from the Final Project Plans and Specifications; (vii) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Final Project Plans and Specifications, and (viii) in the case of Affordable Units only, any change in unit location, number, type, unit size, or level of interior finish, from the Final Project Plans and Specifications.

“**Member**” means any Person with a direct ownership interest in Developer.

“**Modification**” shall have the meaning set forth in Section 13.22.1.

“**Mortgage**” shall mean a mortgage, deed of trust, or other security instrument that is recorded against the Property and/or the Developer-Owned Properties (but no other real property) and secures a loan that provides financing to acquire the Property and/or the Developer-Owned Properties and to develop and construct the Project and the Master Development, and any refinancing of such a loan.

“**Mortgage Agreement**” shall have the meaning set forth in Section 13.22.1(b).

“**Net Sales Proceeds**” means for each Condominium Residential Unit: (i) the gross sales price of the Condominium Residential Unit sold and conveyed, excluding all sums paid by the purchaser of the Condominium Residential Unit for options and upgrades, minus (ii) the ordinary, reasonable and customary closing costs paid by Developer, transfer and recordation fees and taxes paid by Developer, real estate sales commissions and sales management fees with respect to such Condominium Residential Unit, closing cost credits or other such incentives, and amounts paid to any Project Lenders with respect to the financing encumbering the Condominium Residential Unit, provided that: (a) Developer may only deduct such closing costs paid to Developer or Persons related to Developer if the services provided by any of them are of comparable quality to comparable services rendered by a party unrelated to Developer of similar skill, competence and experience; and (b) the portion of any such costs paid to Persons related to Developer that is in excess of the amount that would otherwise be paid to a Person that is unrelated to Developer for the provision of the same services shall not be subtracted from such gross sales price.

“**Objections**” is defined in Section 2.4.2.

“**Outside Closing Date**” is defined in Section 6.1.1.

“**Party**,” when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

“**Performance Letter of Credit**” shall have the meaning set forth in Section 2.2.5.

“**Permits**” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property and/or the Developer-Owned Properties (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Master Development Improvements or the Project, as applicable, in accordance with the Development Plans and this Agreement.

“**Permitted Exceptions**” has the meaning given it in Section 2.4.1.

“**Person**” means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

“**Profit Sharing Payments**” is defined in Section 8.6.

“**Prohibited Person**” shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or Controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Laws concerning organized crime; or

(B) Any Person organized in or Controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(E) Any Person suspended or debarred by HUD or by the District of Columbia government; or

(F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"Prohibited Uses" shall have the meaning set forth in Section 8.1.2(b).

"Project" means the portion of the Master Development Improvements on the Property, and the development and construction thereof in accordance with the Development Plan therefor and this Agreement.

"Project Budget" means Developer's budget for construction of the Project that includes (a) a cost itemization prepared by Developer specifying all costs (direct and indirect) by item and (b) an identification of all Major Subcontracts.

"Project Covenants" means the Construction Covenant, the Affordability Covenant and the covenants contained in the Deed.

“Project Lender” means an Institutional Lender that holds a loan secured by a Mortgage; provided, however, that the Project Lender for the initial Project construction loan must be approved or deemed approved by District in accordance with Section 13.22.1(c).

“Property” means that portion of the District Parcel to be conveyed by District to Developer, which shall be identified and described in the Acknowledgment.

“Punch List Items” mean the minor items of work to be completed or corrected prior to final payment to Developer’s general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Final Project Plans and Specifications.

“Purchase Price” has the meaning set forth in Section 2.1.2 hereof.

“Recorded Covenants” shall mean, collectively, covenants contained in the Deed, the Affordability Covenant, the Construction Covenant, and the Design Review Covenant.

“Rental Base Return” shall mean the mathematical product of: (i) the Base Amount, as increased or decreased on a year-to-year basis as of each anniversary date of the Effective Date, up to the date of a Capital Event, by an amount equal to the CPI Adjustment (Rental), multiplied by (ii) the rentable square footage of the Rental Residential Units included in such Capital Event.

“Rental Residential Units” is defined in Section 8.6.2.

“Residential Portion” shall mean that portion of the Project that is to be used for residential purposes.

“Residential Unit” is any unit constructed as part of the Project to be developed, rented or sold, and used for residential purposes.

“Resolution” is defined in the Recitals.

“Retail Marketing Plan” shall mean Developer’s retail marketing plan and retail strategy, which shall satisfy the Unique Retailer Requirement, as approved by District pursuant to Section 8.1.2.

“Retail Portion” shall mean that portion of the Project that is to be used for retail purposes.

“Schedule of Performance” means that schedule of performance attached hereto as Exhibit H and incorporated herein, which has been approved by District as of the Effective Date, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form), together with the dates for submission of documentation for both the Project and the balance of the Master Development required under this Agreement, which schedule shall be attached to the Development Plans for the Project and for the Master Development and to the Construction Covenant. The Schedule of Performance shall be subject to delays caused by events of Force Majeure, as hereinafter more specifically provided, and to any other revisions expressly provided

for in this Agreement or made pursuant to this Agreement by the Parties or automatically given effect in accordance with this Agreement.

“**Schematic Plans**” are the design plans that present a developed design based on the approved Concept Plans for the Master Development or the Project, as applicable, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32” = 1”) that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16” = 1”); (iii) illustrative elevations and renderings sufficient to review the Master Development or the Project, as applicable (minimum 1/8” = 1”); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Master Development or the Project, as applicable; (v) one set of 24” x 36” presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (1/2” – 1” = 1”); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

“**Second Notice**” means that notice given by Developer or the Developer Parties to District in accordance with Article 4 herein. Any Second Notice shall be labeled, in bold, 18 point font, as a “Second and Final Notice.” Developer or the Developer Parties, as applicable, shall deliver any Second Notice to District, in the manner identified in Section 12.1, in an envelope that is conspicuously labeled “Second and Final Notice.”

“**Settlement Agent**” means Benjamin M. Soto, Esq., Premium Title & Escrow, LLC, the title agent selected by Developer and mutually acceptable to Developer and District.

“**Settlement Statement**” is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

“**Street Realignment Work**” shall have the meaning set forth in Section 5.1.1(j)(y).

“**Studies**” is defined in Section 2.3.1(a).

“**Subdivision**” shall have the meaning set forth in Section 2.4.4.

“**Subsidy Package**” shall have the meaning set forth in Section 2.8.2(b).

“**Survey**” shall have the meaning set forth in Section 2.4.2.

“**Termination Fee**” shall mean a fee to be paid by District to the Developer pursuant to the terms of this Agreement, which fee shall be in an amount equal to fifty percent (50%) of the amount paid by Developer to the Utility Design Work Contractor under the Utility Design Work Contract. In no event shall the Termination Fee be greater than \$125,000.

“**Title Commitment**” shall have the meaning set forth in Section 2.4.2.

“**Unique Retailer Requirement**” shall have the meaning set forth in Section 8.1.2(a).

“**Utilities Relocation Work**” shall have the meaning set forth in Section 5.1.1(j)(x). The Utilities Relocation Work does not include the Utility Design Work.

“**Utility Design Work**” shall mean the design work undertaken by Developer for the relocation of the water, storm sewer, and sanitary sewer lines on the Property pursuant to the Utility Design Work Contract.

“**Utility Design Work Completion**” shall mean (a) the completion of the design work contemplated under the Utility Design Work Contract and Developer’s full payment therefor in accordance with Sections 4.7.2 and 4.7.3, (b) Developer’s delivery to District of (i) final plans and specifications for the Utilities Design Work and (ii) the engineer’s final estimate of the costs of the Utilities Design Work as required pursuant to Section 4.7.1(c), and (c) assignment of the Utility Design Work Contract, any warranties thereunder, and the final plans and specifications for the Utilities Design Work to District free and clear of any liens or claims for payment.

“**Utility Design Work Contract**” is that contract between Developer and the Utility Design Work Contractor for the Utility Design Work, which is to be attached hereto as Exhibit M after execution thereof pursuant to Section 4.7.1(a), as the same may be amended with District’s prior approval pursuant to Section 4.7.4.

“**Utility Design Work Contractor**” means Volkert and Associates, as contractor under the Utility Design Work Contract.

ARTICLE 2 CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE; DISPOSITION FEE

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer, and Developer shall purchase from District, all of District’s right, title, and interest in and to the Property.

2.1.2 The purchase price of the Property is Five Hundred Thousand Dollars (\$500,000) (the “**Purchase Price**”), payable at Closing, subject to closing costs and adjustments as provided in Section 6.3.2.

2.1.3 In addition to the Purchase Price, Developer shall pay to District, as a closing cost, a disposition fee in the amount of One Hundred Thousand Dollars (\$100,000) (the “**Disposition Fee**”), which is the amount reasonably calculated by District to defray the costs and expenses associated with District’s participation in this transaction.

2.1.4 Developer shall pay the Purchase Price and the Disposition Fee at Closing in immediately available funds through a closing escrow established with the Settlement Agent.