

contrary, however, upon the closing of a sale of any Residential Unit in accordance with the terms of this Agreement, this Agreement shall terminate as to such Residential Unit and neither the purchaser thereof nor its successors or assigns, nor any mortgagee of such Residential Unit, shall be bound by any of the terms or conditions of this Agreement, provided that the foregoing shall not operate to excuse or release any such purchaser or successors or assigns, or mortgagee who becomes the owner of such Residential Unit, from the obligation to comply with the Affordability Covenant and any covenants and restrictions set forth in the deed conveying such Residential Unit to such purchaser.

13.12 THIRD PARTY BENEFICIARY

No Person (other than the Developer Parties) shall be a third party beneficiary of this Agreement.

13.13 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 FURTHER ASSURANCES

Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Developer acknowledges that District is not authorized to make any obligation, including the obligation to pay the Termination Fee, in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08; and (iv) Section 446 of the District of Columbia Home Rule Act, as the foregoing statutes may be amended from time to time.

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void. It is Developer's obligation to accurately ascertain the extent of District's authority.

13.17 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.19 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

13.20 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer 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. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging 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 (b) is a person described in Section 1 of the Anti-Terrorism Order.

13.21 ESTOPPEL CERTIFICATE

From time to time upon request of Developer, District will, upon fifteen (15) days' written request of Developer, issue to any mortgagee, prospective mortgagee, investor, prospective investor, purchaser or prospective purchaser of all or any part of the Property or Developer-Owned Properties (each, an "Estoppel Recipient") an estoppel certificate or other instrument certifying, to District's actual knowledge as of the date of such certificate or instrument, (i) that this Agreement is unmodified and in full force and effect, or if modified, stating the nature of

such modification, (ii) that there is no Developer Default threatened or existing under this Agreement, and (iii) such other factual matters as Developer or any Estoppel Recipient may reasonably request that are within the actual knowledge of District and relate to this Agreement.

13.22 PROJECT FINANCING

13.22.1 Mortgages Permitted. (a) Developer and Developer Parties shall be entitled, at their sole discretion and without District's consent, to encumber, on or after Closing, the Property and the Developer-Owned Properties with one or more Mortgages, provided (i) each such Mortgage secures a loan provided by a Project Lender, (ii) the proceeds of the loan financing construction of the Project shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property or business operation and (iii) each such Mortgage shall be subordinate to the applicable Recorded Covenants. District agrees to cooperate with any prospective Project Lender providing any such financing and to negotiate and consider reasonable modifications to the provisions of this Agreement and the Recorded Covenants and to District's remedies for Developer's defaults thereunder requested by such prospective Project Lender, such as, but not limited to, notice, cure, and grace periods (each, a "**Modification**") that such a prospective Project Lender may require, provided any such Modifications shall not substantially impair or materially and adversely affect District's rights or remedies or materially increase District's obligations under this Agreement and the Recorded Covenants, and no such Modifications shall obligate District to pay, perform, or otherwise do anything it is not legally permitted to do. Notwithstanding the foregoing, Developer shall promptly notify District of any Mortgage that has been granted on or attached to the Property.

(b) Upon request by Developer (with respect to the Project) or the Developer Parties (with respect to the portion of the Master Development on the Developer-Owned Properties), District shall enter into an agreement with a Project Lender regarding the rights, remedies and responsibilities of District and the Project Lender in the event of a default by Developer or the Developer Parties, as applicable, under the applicable loan documents, this Agreement or the Recorded Covenants (a "**Mortgage Agreement**"); provided, however, that (i) no Event of Default by Developer under the Project Covenants (or, as applicable, by the Developer Parties under the Design Review Covenant) shall have occurred and be continuing; (ii) such Mortgage Agreement shall not materially adversely affect the rights, remedies and obligations of District set forth in this Agreement or the Recorded Covenants; and (iii) such Mortgage Agreement shall not obligate District to pay, perform, or otherwise do anything it is not legally permitted to do.

(c) Notwithstanding the foregoing, prior to executing any Mortgage securing the initial Project construction loan, Developer will deliver to District a written request for District's approval of the Institutional Lender to whom the Mortgage will be granted, which approval shall not be unreasonably withheld, conditioned or delayed. District will respond to any such request within ten (10) Business Days after its receipt of same. If District disapproves such Institutional Lender, then District shall identify the reasons therefor in a written notice to Developer. If District fails to deliver its written response to any such request within ten (10) Business Days after District's receipt of the same, then District's approval shall be deemed to have been granted.

13.22.2 Title Subject to Project Covenants. All the rights in and to the Property acquired by any Project Lender under a Mortgage, either before or after foreclosure or transfer by deed in lieu of foreclosure (in any such case, a "Foreclosure") of the Property, or by a purchaser of the Property by means of a Foreclosure or other sale of the Property, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Project Covenants, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a Mortgage Agreement or as expressly provided in this Agreement or in the Project Covenants. All the rights in and to the Developer-Owned Properties acquired by any Project Lender under a Mortgage, either before or after Foreclosure of the Developer-Owned Properties, or by a purchaser of the Developer-Owned Properties by means of a Foreclosure or other sale of the Developer-Owned Properties, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Design Review Covenant, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a separate written instrument addressed to any such Project Lender or as expressly provided in this Agreement or in the Design Review Covenant.

13.22.3 Assumption of Recorded Covenants.

(a) The Property. In the event of a Foreclosure in which the Property is acquired by a Person other than a Project Lender, or in the event that after acquiring title to the Property through a Foreclosure the Project Lender shall thereafter transfer and convey the Property, the purchaser, transferee or assignee shall expressly assume all of the covenants, agreements and obligations of Developer under the Project Covenants by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth on the Schedule of Performance shall be extended by District for such reasonable period of time as may then be necessary to complete development and construction of the Project. If the Project Lender acquires title to the Property through Foreclosure, such Project Lender shall not be required to assume the Project Covenants so long as the Project Lender does not undertake or continue the construction or completion of the Project beyond the extent necessary to conserve or protect the Project or construction already made. If the Project Lender acquires the Property and thereafter undertakes or continues the construction or completion of the Project beyond the extent necessary to conserve or protect the Project or construction already made, then subject to the provisions of any agreement entered into by District and any such Project Lender, the Project Lender shall expressly assume all of the covenants, agreements and obligations of Developer under the Project Covenants by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth on the Schedule of Performance shall be extended by District for such reasonable period of time as may then be necessary to complete development and construction of the Project. Any such purchaser in Foreclosure or assuming Project Lender properly completing the Project shall be entitled, upon written request made to District, to all Releases (as defined in the Construction Covenant) to the same extent and in the same manner as Developer would have been entitled if Developer had not defaulted. The Project Lender shall have no liability for any obligations under the Project Covenants arising prior to the assumption by the Project Lender of the Project Covenants; provided, however, if such

obligations continue after Project Lender's assumption of the Project Covenants, Project Lender shall be responsible for any such obligations. Project Lender shall have no liability for any obligations under the Project Covenants after the date that such Project Lender transfers title to the Property to an unrelated third party.

(b) The Developer-Owned Properties. In the event of a Foreclosure in which the Developer-Owned Properties are acquired by a Person other than a Project Lender, or in the event that after acquiring title to the Developer-Owned Properties through a Foreclosure the Project Lender shall thereafter transfer and convey the Developer-Owned Properties, the purchaser, transferee or assignee shall expressly assume all of the covenants, agreements and obligations of Developer under the Design Review Covenant by a written instrument to be filed promptly and recorded among the Land Records. If the Project Lender acquires title to the Developer-Owned Properties through Foreclosure, such Project Lender shall not be required to assume the Design Review Covenant so long as the Project Lender does not undertake or continue the construction or completion of the Master Development on the Developer-Owned Properties beyond the extent necessary to conserve or protect the Master Development or construction already made. If the Project Lender acquires the Developer-Owned Properties and thereafter undertakes or continues the construction or completion of the Master Development thereon beyond the extent necessary to conserve or protect the Master Development or construction already made, then subject to the provisions of any agreement entered into by District and any such Project Lender, the Project Lender shall expressly assume all of the covenants, agreements and obligations of Developer under the Design Review Covenant by a written instrument to be filed promptly and recorded among the Land Records. Any such purchaser in Foreclosure or assuming Project Lender properly completing the Master Development on the Developer-Owned Properties shall be entitled, upon written request made to District, to all Releases (as defined in the Design Review Covenant) to the same extent and in the same manner as the Developer Parties would have been entitled if the Developer Parties had not defaulted. The Project Lender shall have no liability for any obligations under the Design Review Covenant arising prior to the assumption by the Project Lender of the Design Review Covenant; provided, however, if such obligations continue after Project Lender's assumption of the Design Review Covenant, Project Lender shall be responsible for any such obligations. Project Lender shall have no liability for any obligations under the Design Review Covenant after the date that such Project Lender transfers title to the Developer Owned-Properties to an unrelated third party.

13.22.4 Copy of Notices to Project Lenders. Whenever District shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations or covenants under this Agreement in accordance with Article 9 or otherwise, or under any of the Recorded Covenants, District shall at the same time forward a copy of such notice or demand to each Project Lender with a Mortgage encumbering the Property, at the last address of such Project Lender provided to District. Whenever District shall deliver any notice or demand to the Developer Parties with respect to any breach or default by the Developer Parties in their obligations or covenants under this Agreement, or under the Design Review Covenant, District shall at the same time forward a copy of such notice or demand to each Project Lender with a Mortgage encumbering the Developer-Owned Properties, at the last address of such Project Lender provided to District.

13.23 SURVIVAL

The provisions of this Article 13 shall be incorporated into the Recorded Covenants, including the Design Review Covenant to the extent applicable.

[signatures on following pages]

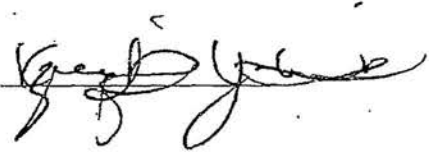
IN TESTIMONY WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, its duly authorized representative, as of the date set forth below his signature.

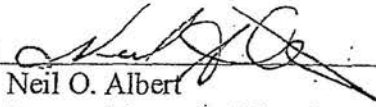
IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name as of the date set forth below its signature.

DISTRICT:

WITNESS:

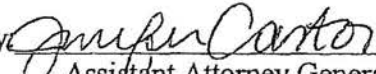
DISTRICT OF COLUMBIA, by and through the
Office of the Deputy Mayor for Planning and
Economic Development



By: 
Neil O. Albert
Deputy Mayor for Planning and Economic
Development

Date: December 19, 2008

APPROVED AS TO LEGAL SUFFICIENCY

By: 
Assistant Attorney General

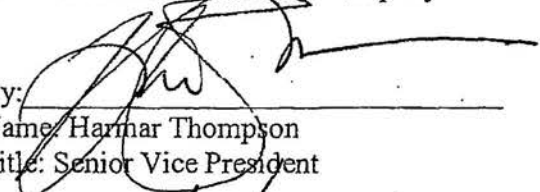
Date: 12/19/08

DEVELOPER:

WITNESS:

DAKOTA TRIANGLE, LLC,
a Delaware limited liability company



By: 
Name: Harmar Thompson
Title: Senior Vice President

Date: 12/17/08

[Signature page 1 of 3 to Land Disposition Agreement]

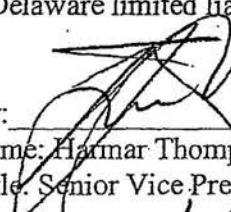
JOINDER

DAKOTA SQUARE, LLC, a Delaware limited liability company, hereby joins in this Agreement for the sole purposes of agreeing, for so long as this Agreement is in effect, (i) to be bound to the obligations of the Developer Parties contained herein, to the extent such obligations apply to the owner of the Dakota Square Property (as hereinafter defined), (ii) to the provisions of the Design Review Covenant that will be recorded against its real property and the improvements to be constructed thereon located at 300-320 Riggs Road, N.E., in Washington, D.C. (Lot 0052 in Square 3748) in the District of Columbia (the "**Dakota Square Property**"), (iii) not to convey its fee interest in the Dakota Square Property without obtaining the prior written approval of District, which approval may be conditioned on the proposed grantee agreeing in writing, for the benefit of the District, to the terms and conditions of the Design Review Covenant and agreeing to record the same against the Dakota Square Property upon Closing under this Agreement, and (iv) not to further encumber the Dakota Square Property with a construction loan secured by the Dakota Square Property without giving notice of the Design Review Covenant to the proposed secured lender and obtaining the written agreement of such lender to subordinate the lien of its deed of trust to the Design Review Covenant when it is recorded against the Dakota Square Property in connection with Closing hereunder.

WITNESS:



DAKOTA SQUARE, LLC,
a Delaware limited liability company

By: 
Name: Harmar Thompson
Title: Senior Vice President

Date: 12/19/08

[Signature page 2 of 3 to Land Disposition Agreement]

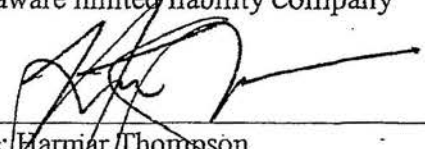
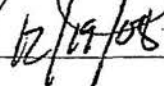
JOINDER

DAKOTA POINTS, LLC, a Delaware limited liability company, hereby joins in this Agreement for the sole purposes of agreeing, for so long as this Agreement is in effect, (i) to be bound by the obligations of the Developer Parties contained herein, to the extent such obligations apply to the owner of the Dakota Points Property (as hereinafter defined), (ii) to the provisions of the Design Review Covenant that will be recorded against its real property and the improvements to be constructed thereon located at 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760) in the District of Columbia (the "**Dakota Points Property**"), (iii) not to convey its fee interest in the Dakota Points Property without obtaining the prior written approval of District, which approval may be conditioned on the proposed grantee agreeing in writing, for the benefit of the District, to the terms and conditions of the Design Review Covenant and agreeing to record the same against the Dakota Points Property upon Closing under this Agreement, and (iv) not to encumber the Dakota Points Property with a construction loan secured by the Dakota Square Property without giving notice of the Design Review Covenant to the proposed secured lender and obtaining the written agreement of such lender to subordinate the lien of its deed of trust to the Design Review Covenant when it is recorded against the Dakota Points Property in connection with Closing hereunder.

WITNESS:



DAKOTA POINTS, LLC,
a Delaware limited liability company

By: 
Name: Harniar Thompson
Title: Senior Vice President
Date: 

[Signature page 3 of 3 to Land Disposition Agreement]