PROPOSED

DEVELOPMENT AND CONSTRUCTION AGREEMENT

THIS DEVELOPMENT AND CONSTRUCTION AGREEMENT ("**Agreement**") is made as of this _____ day of _____, 2004, by and between 4600 BRANDYWINE ASSOCIATES, LLC ("**Brandywine**") a District of Columbia limited liability company, its successors and assigns; the owners of the properties located at 4117-4121 Brandywine Street, NW (collectively the "**Residential Neighbors**"); Friendship Animal Hospital; and 4618 Wisconsin Avenue Associates Limited Partnership (all collectively, the "**Neighborhood Organizations**").

RECITALS

WHEREAS, as a condition of the Zoning Commission's approval of the Brandywine application for a Planned Unit Development application for the property located at the intersection of Wisconsin Avenue and Brandywine Streets, NW, Lots 817 and 820, Square 1732 (the "**Subject Site**"), Brandywine agrees to enter into the following Agreement with the members of the Neighborhood Organizations, upon the terms below; and

WHEREAS, the members of the Neighborhood Organizations, who are subject to this Agreement, and Brandywine seek to mitigate any adverse impact on the surrounding neighborhood resulting from construction activity related to Brandywine's plans to construct a mixed-use development (the "**Project**") on the Subject Site.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt of which are hereby acknowledged, the parties hereto, hereby agree as follows:

1. **Communication**.

a. **Brandywine Representative.** Brandywine shall designate a representative ("**Representative**") to be the key contact for interaction with the signatory Neighborhood Organizations. Signatory Neighborhood Organizations are defined as those parties that have executed this Agreement. The Representative will have a local office and be accessible during all business hours. At any time construction activity is occurring on the Subject Site, the Representative or his/her designee shall be available on-site or by telephone to receive complaints or other communications from the signatory Neighborhood Organizations. The name and work telephone number of the Representative or his/her appointed designee shall be conspicuously posted on the Subject Site and shall be readily available to members of the community. In addition, a name and telephone number of a person designated by Brandywine to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to members of the community.

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b. **Brandywine Representative Duties.** The Representative and his/her designee will be able to answer questions and receive comments about the site activities, address any concerns the Neighborhood Organizations and members of the community might have throughout the construction process, and have authority to remedy promptly violations of this Construction Agreement and enforce its provisions. The Representative, designee and emergency contact shall:

(i) receive notice of violations of this Construction Agreement;

(ii) respond as soon as possible, to the person who has reported the violation, and to the Neighborhood Organization Contact Person (described below);

(iii) act to remedy the violation as soon as possible; and

(iv) contact ANC 3E and relate complaint, remedy and time frame for resolution.

c. **Neighborhood Organization Contact Person.** In turn, the signatory Neighborhood Organizations will designate a single contact person ("**Contact Person**"), who may change from time to time, to represent the signatory Neighborhood Organizations. The initial Contact Person will be determined prior to the start of construction activity on the Subject Site. The Contact Person will receive and disseminate information from Brandywine to the community. Brandywine shall provide to the Contact Person, and keep updated, the names of and pertinent information about the Representative, the designee and emergency contact, including their home phone numbers and beeper numbers, as appropriate.

2. <u>Construction</u>. Brandywine shall require that all their personnel and vendors, including supply and service vendors, will comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety. The following is a discussion of construction-related issues and shall be binding on Brandywine, its subcontractors and any successors and/or assigns of Brandywine.

a. **Permits**. Brandywine will secure all permits that are required to complete the Project. Brandywine will provide the raze and main building permits, and accompanying plans available for the signatory Neighborhood Organizations. All plans and permits will be on-site as required under the Construction Codes.

b. **Site Management**.

(i) Brandywine will erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process. Brandywine and its contractors will work with the signatory members of the Neighborhood Organizations and the Department of Consumer and Regulatory Affairs to maintain temporary storm water management systems throughout the Project's construction until such time as the permanent facilities are constructed, approved and functioning such that there shall be no adverse water impacts on the adjacent neighborhood

(ii) A minimum amount of lighting, directed away from residential properties, will be provided at the Subject Site at night. These lights will be sufficient to provide necessary security and to comply with federal and municipal safety standards.

(iii) Subject to District of Columbia approval, Brandywine will attempt to locate the construction trailer (and sales trailer if applicable) on the Subject Site or Wisconsin Avenue so as to minimize impacts on adjacent neighbors. If such approval is not granted, such trailer(s) will be located to minimize neighborhood impacts.

c. **Cleanliness.** Brandywine will remove rubbish and construction debris continuously during the construction period during the normal construction workday and during periods of weekend construction work. In addition, Brandywine will monitor and police the construction site daily or more often as required to ensure cleanliness. Brandywine will also undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back fill trucks will be covered before proceeding from the Subject Site onto city streets. Dust and debris will be removed from the Subject Site on an as needed basis. Portable latrines will be located on the Subject Site to minimize impacts upon adjacent properties.

d. **Work Hours.**

(i) The normal construction work week will be Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturday from 8:00 a.m. until 4:00 p.m. All trucks for delivery of all materials, construction or otherwise, will arrive, depart and operate on the Subject Site only during the foregoing hours. There will be no queuing of construction related vehicles or arrival of workers prior to stated work hours.

(ii) Brandywine will make good faith efforts to limit work that is likely to disturb the residents of the adjacent neighborhoods to weekdays, except where limitations on work during the week require work on Saturdays to meet the requirements of construction teams for a 40 hour work week

(iii) Brandywine will not permit any activity on the Subject Site that requires the movement of heavy vehicle traffic or other significant traffic, to or from, the Subject Site or which generates sound levels in excess of sixty decibels (60 db) or otherwise is likely to significantly disturb the residents of the adjacent neighborhoods prior to 7:00 AM or after 6:30 PM on weekdays and prior to 9:00 AM or after 4:00 PM on weekends.

e. **Contractors and Subcontractors.** Brandywine will require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in this Agreement. Brandywine will also require that all contractors and subcontractors use only licensed vehicles and drivers and that they comply with all DC traffic laws and regulations.

f. **Traffic, Loading, and Parking.**

(i) All construction related vehicular access to the Subject Site shall be from Wisconsin Avenue and will exit the site via Brandywine to River Road. Truck queuing and routing will be worked out with the DC Department of Transportation.

(ii) Brandywine will use its best efforts to ensure that construction related traffic will not impede rush hour traffic on Wisconsin Avenue and Brandywine Streets. A flagman will be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on Wisconsin Avenue.

(iii) Parking for all construction workers will be provided for on the Subject Site, in adjacent commercial parking lots or other off-site locations. No construction related parking will be permitted on the 4100 block of Brandywine Street.

3. **Pre-Construction Surveys.** Brandywine shall offer to perform interior and exterior pre-construction surveys of 4620 Wisconsin Avenue, NW and 4105 Brandywine Street, NW, as well as 4117-4121 Brandywine Street, NW. Such surveys shall provide the parties a reference point from which to determine the effect of the construction work on the Subject Site on the surveyed properties and the improvements thereon. The surveys shall be performed at Brandywine's sole cost and expense. All reports generated as a result of the surveys shall be provided to both Brandywine and the surveyed property owner. If a surveyed property owner believes that damage has occurred as a result of construction activity on the Subject Site, such property owner shall notify Brandywine of the purported damage. Brandywine agrees to work with all surveyed property owner(s) to achieve a prompt resolution to any complaints regarding property damage. The Neighborhood Organizations may propose Surveyor's to be selected by Brandywine, subject to the Neighborhood Organizations' approval which is not to be unreasonably withheld.

4. **Washing of Residential Neighbor's Windows During Construction.** Brandywine agrees to wash the windows of the properties located at 4117-4121 Brandywine Street, NW three times during the period of construction activities on the Subject Site.

5. **Condition of Zoning Commission Approval**. This Agreement shall be submitted as part of Brandywine's PUD application to the Zoning Commission and shall be incorporated in and become a condition of any Zoning Commission approval for the Project whether or not it is executed by all of the parties to this Agreement.

6. **Remedies**. This Agreement does not limit any common law or statutory rights or remedies available to any person relating to damages sustained to person or property attributable to construction activities on the Subject Site.

7. **Severability**. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the District of Columbia. If any term, provision, covenant or agreement contained herein, or the application thereof to any person or circumstances, shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this Agreement or the application of such term, provision, covenant or agreement to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

8. **Authority to Execute**. Each of the parties executing this Agreement represents and warrants to each of the other parties hereto that: (i) it has the full power and authority to enter into this Agreement and to consummate the transaction described herein without obtaining any further approvals or consents, and (ii) the entering into of the Agreement will not constitute or result in a violation or breach by any such party of any judgment, order, writ, injunction or decree issued against or imposed upon it or any agreement to which it is a party or by which it is bound.

9. **Counterparts**. This Agreement may be executed in counterparts and via original or facsimile signature.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have signed and delivered these presents as their own free act and deed as of the date and year first herein above written.

4600 BRANDYWINE ASSOCIATES, LLC

By: _____

Its:

FRIENDSHIP ANIMAL HOSPITAL

By: _____

Its:

4618 WISCONSIN AVENUE ASSOCIATES LIMITED PARTNERSHIP

By: _____

Its:

4117 BRANDYWINE STREET, NW

By: _____

Its:

4119 BRANDYWINE STREET, NW

By: _____

4121 BRANDYWINE STREET, NW

By: _____