



**BEFORE THE ZONING COMMISSION OR  
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA**



**FORM 150 – MOTION FORM**

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A  
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

**CASE NO.:** 19705

**Motion of:**  Applicant  Petitioner  Appellant  Party  Intervenor  Other \_\_\_\_\_

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Dismiss the Application

**Points and Authorities:**

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

**Consent:**

Did movant obtain consent for the motion from all affected parties?

- Yes, consent was obtained by all parties       Consent was obtained by some, but not all parties  
 No attempt was made       Despite diligent efforts consent could not be obtained

Further Explanation: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21 day of February, 2018

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:  Mailed letter  Hand delivery  E-Mail  Other \_\_\_\_\_

Signature:

Print Name: **Vernon W. Johnson, III, Nixon Peabody LLP**

Address: **799 Ninth Street, N.W., Suite 500, Washington, D.C. 20001**

Phone No.: **(202) 585-8401**      E-Mail: **vjohnson@nixonpeabody.com**

**BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA**

**In Re Application of:** ) **BZA Case No. 19705**  
 ) **ANC 1B**  
**Madison Investments LLC** ) **Public Hearing Date: March 7, 2018**

**MOTION TO DISMISS APPLICATION**

LDP Acquisitions LLC (“LDP”) has requested party status in this matter due to its direct interest in a portion of the real property that is the subject of the application of Madison Investments LLC (“Madison”) in this matter. LDP hereby respectfully moves to dismiss the application under Rule 407 of the Board of Zoning Adjustment Rules of Practice and Procedure.

LDP, an entity formed by Jair Lynch Real Estate Partners, is under contract to acquire the property at 2118 Fourteenth Street, N.W. (Lot 10 in Square 0203). That property is part of the parcel for which this application seeks approval that would include special exceptions for the height and lot occupancy requirements as part of a mixed use development project.

Because of LDP’s superior rights in that real estate, Madison has no legal right to submit this application. Madison no doubt has tactical reasons for pursuing the application at this time and in this rushed manner. Among other things, Madison no doubt believes that the pendency of its application gives it some sort of advantage in trying to acquire the affected real estate, including the property in which LDP holds equitable title and other rights and interests. The zoning regulations should not be put to such a use, and the BZA’s attention and resources should not be devoted to consideration of this matter given the disputed rights and interests involved.

LDP’s rights and claims are presently in litigation before the Superior Court of the District of Columbia, in a case styled as *LDP Acquisitions LLC v. Felix Nelson Ayala, et al.*, Civil Action No. 2017 CA 006699 B (Calendar 13; Judge John M. Campbell). A copy of the related lawsuit is attached as Exhibit “A” hereto. LDP’s rights and interests in the affected real

estate are unique. *See, e.g., Tauber v. Quan*, 938 A.2d 724, 732 (D.C. 2007) (“When land is the subject matter of the agreement, the legal remedy is assumed to be inadequate, since each parcel of land is unique.”). LDP is moving for appropriate injunctive and other relief from the Court, but must also voice its position and objection to this application before the other appropriate authorities, including the Board of Zoning Adjustment. LDP has also asserted its *lis pendens* rights pursuant to D.C. Code § 42-1207, which, by statute, remain in place through the disposition of any appeal. D.C. Code § 42-1207(d)(1). A copy of the related Notice of Pending Litigation is attached as Exhibit “B” hereto.

Under the circumstances, Madison Investments’ hasty submission of this matter for consideration by the BZA is inappropriate. Insofar as the application implicates real estate in which LDP has superior rights, and for which LDP might seek different or alternative development plans when it closes on its acquisition, LDP’s rights would be severely, irreparably, and adversely affected by an application moving forward for review and being denied or otherwise affected by comments from ANC 1B, the Historic Preservation Review Board, community members, and other interested parties. It is therefore improper for this application to proceed in this manner and at this time. Indeed, LDP’s interests and rights would be more significantly, distinctively, and uniquely affected in character or kind by Madison’s proposed zoning action than that of other persons in the general public. LDP’s rights of future use, enjoyment, and development would be affected by the plans pursued by Madison. Moreover, in the event that Madison’s application were to be denied, LDP could be barred for as long as a year in submitting any new application or appeal.

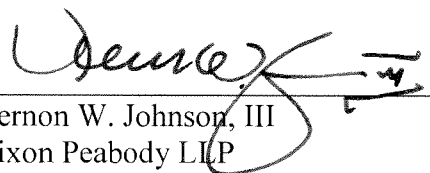
LDP would therefore respectfully request that the application’s consideration before the BZA be denied or deferred, pending the outcome of the litigation in the Superior Court, at this

time. LDP intends to appear as a party in this proceeding and at any other meeting at which these issues are considered. LDP is voicing its objection and position to ANC 1B and the Historic Preservation Review Board, as well.

Prior to filing this motion, LDP requested the consent of the applicant to the relief requested. The applicant did not consent to the relief requested on this motion.

LDP respectfully requests that this motion be granted and the application be dismissed. In the alternative, review of this application should be deferred until the Superior Court has had the opportunity to review the matter and any and all subsequent rights of appeal are exhausted.

Respectfully Submitted,



Vernon W. Johnson, III  
Nixon Peabody LLP  
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Suite 500  
Washington, D.C. 20001  
(202) 585-8401 – Telephone  
(202) 585-8080 – Fax  
[vjohnson@nixonpeabody.com](mailto:vjohnson@nixonpeabody.com)

*Counsel for LDP Acquisitions LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of February, 2018, I caused to be emailed a copy of this Motion to Dismiss Application and accompanying Exhibits A and B to the following:

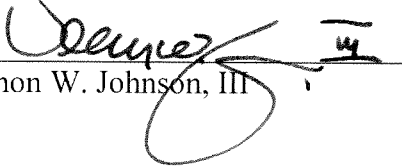
Meredith H. Moldenhauer, Esq.  
Cozen O'Connor  
1200 Nineteenth Street, N.W.  
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District of Columbia Office of Planning  
c/o Matthew Jesick  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024  
[Matthew.Jesick@dc.gov](mailto:Matthew.Jesick@dc.gov)

District Department of Transportation  
55 M Street, SE, Suite 400  
Washington, DC 20003  
[Patrick.Reed@dc.gov](mailto:Patrick.Reed@dc.gov)

Advisory Neighborhood Commission 1B  
c/o James A. Turner, Chairperson  
[1B09@anc.dc.gov](mailto:1B09@anc.dc.gov)

Advisory Neighborhood Commission 1B  
c/o Jon Squicciarini, SMD Commissioner  
[1B04@anc.dc.gov](mailto:1B04@anc.dc.gov)

  
\_\_\_\_\_  
Vernon W. Johnson, III

**EXHIBIT “A”**

**(Follows this Page)**

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

LDP ACQUISITIONS LLC  
1508 U Street, NW  
Washington, DC 20009

Plaintiff,

v.

Case No. : 2017 CA 006699 B

FELIX NELSON AYALA  
3501 14<sup>TH</sup> St., NW  
Washington, DC 20010

and

MARIA E. AYALA  
3501 14<sup>TH</sup> St., NW  
Washington, DC 20010

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, LDP Acquisitions LLC (“Purchaser”), by counsel, for its Verified Complaint for Declaratory and Injunctive Relief against the Defendants, Felix Nelson Ayala and Maria E. Ayala (collectively “Seller”) and in support states as follows:

1. Jurisdiction of this Court is conferred by DC Code § 11-921 in that the transactions complained of below and the parties hereto all do business in the District of Columbia.
2. On April 6, 2017 Purchaser entered into an Agreement of Purchase and Sale (“Agreement”) with Seller to purchase the property located at 2118 14<sup>th</sup> St. NW, Washington, DC 20009 (“Property”). See, Exhibit A.
3. The Agreement was entered into on a coordinated basis and with Seller’s understanding of Purchaser’s intention with respect to the transaction which was to purchase the

Property along with the two (2) lots adjacent to the Property located at 2114 14<sup>th</sup> St. NW, Washington, DC 20009 and 2120 14<sup>th</sup> St. NW, Washington, DC 20009 (collectively “MT Properties”) owned by a third-party, and combine the properties in order to develop a mixed-use project on the entire location.

4. The Seller recognized the materiality of the MT Properties to Purchaser’s plan and as part of the Agreement agreed to facilitate the Purchaser’s efforts to acquire and then combine the properties.

5. Section 5.8(c) of the Agreement provides in relevant part as follow:

...[I]n the event that it *shall become impossible or impracticable for Purchaser to acquire the Martha's Table Properties*, then Seller shall have the right to terminate this Agreement *upon five (5) days written notice sent to Purchaser* and thereupon the Deposit shall be returned to the Purchaser, unless prior to the expiration of such five (5) day period Purchaser shall indicate its intent to waive the closing condition set forth in Section 6.1.3 hereof, and in such event this Agreement shall continue in full force and effect in accordance with its terms... *Id.* (emphasis added)

6. Section 10.12 of the Agreement defines the term “Notice” and states that

*Except as otherwise set forth in this Agreement, notices* and other communications required or permitted under this Agreement shall be *...delivered by hand* against receipt *or sent by recognized overnight delivery service...* *Id.* (emphasis added)

7. On or about May 30, 2017 the parties became aware that the MT Property had come under an agreement of sale (“MT Agreement of Sale”) with an unaffiliated third-party.

8. Upon information and belief, the closing date for the MT Agreement of Sale is set for a time far out into the future and understood to be approximately twelve (12) to eighteen (18) months from the date of execution of the MT Agreement of Sale.

9. Since becoming aware of the MT Agreement of Sale, the parties extended the due diligence study period under the Agreement two times on June 1, 2017 and August 28, 2017.



10. In an effort to cause premature termination of the Agreement Sellers attempted to mischaracterize the MT Agreement of Sale as purchase of the MT Properties and claim a right to terminate the Agreement.

11. Sellers did so by issuing a September 19, 2017 letter entitled “Termination of Agreement of Purchase and Sale” (“Termination Letter”). See, Exhibit B.

12. Within the Termination Letter Sellers mischaracterized the execution of the MT Agreement of Sale as evidencing that the MT Properties “ha[ve] been purchased.” Id.

13. Sellers then allege that based the execution of the MT Agreement of Sale, the purchase of the MT Properties “as contemplated in the Agreement has become impossible or impracticable.” Id.

14. Finally, Sellers assert given the execution of the MT Agreement of Sale that pursuant to Section 5.8(c) that they “hereby terminate the Agreement.” Id.

15. The Termination Letter wrongfully asserts that the MT Properties were “purchased.”

16. Moreover, neither the existence of the MT Agreement of Sale nor the parties awareness of same, make it “impossible or impracticable” for the Purchaser to acquire the MT Properties.

17. Additionally, the Termination Letter fails to effectuate proper notice to terminate the Agreement as it purports an immediate termination rather than becoming effective upon the expiration of 5-days from that date notice was sent to Purchaser as required by Section 5.8(c).

18. The Termination failed to notify or provide Purchaser with the ability to exercise its right to indicate an intent to waive the closing condition set forth in Section 6.1.3 as required by Section 5.8(c) to permit Purchaser to have the Agreement continue to remain in full force and effect.

19. The Termination Letter was sent to the Purchaser via overnight Fedex service with delivery on September 20, 2017 to Purchaser.

20. On September 22, 2017 Purchaser responded to the Termination Letter rejecting Sellers' purported attempt to terminate the Agreement ("Rejection Letter"). See, Exhibit C.

21. Within its Rejection Letter, Purchaser notes the defects within the Termination Letter as outlined in the above allegations and further demanded that Sellers revoke their purported attempted termination and confirm the continuing full force and effect of the Agreement. Id.

22. Sellers replied in writing to the Purchaser's Rejection Letter on September 25, 2017 declining the demanded acknowledgment and/or confirmation. See, Exhibit D.

#### **COUNT I: DECLARATORY RELIEF**

23. All previous allegations incorporated herein by reference.

24. A controversy exists between Seller and Purchaser with respect to the parties' rights, benefits, obligations and performance under the Agreement and under the same a dispute has arisen. Absent judicial declaration of the parties' respective rights and obligations and duties under the Agreement, Sellers may improperly seek to terminate the Agreement and Purchaser will be damaged.

25. Accordingly, the Court is requested to enter declaratory relief as to Purchaser in its favor, declaring that no condition has arisen which gives rise to the Seller's right to terminate the Agreement as defined by Section 5.8(C) therein, that Seller may not declare a termination, pursue to sell the Property, or take any such action as would operate to cause Purchaser to lose its rights under the Agreement to purchase the Property or forfeit its right as defined therein.

26. And that judgment is entered in favor of Purchaser entitled Purchaser to undisturbed rights to purchase the Property under the terms of the Agreement, and that Purchaser may proceed with such rights as defined therein.

#### **COUNT II: INJUNCTIVE RELIEF**

27. All previous paragraphs incorporated herein by reference.

28. Sellers' actions to date are unjustified by the Agreement, baseless and, if continued, will cause irreparable injury to the Purchaser.

29. Absent preliminary and permanent injunctive relief, Sellers have attempted to and or intend to take steps to terminate the Agreement, cause Purchaser to lose its rights and interest to purchase the Property and cause Purchaser irreparable damage.

30. The balance of harm tilts in favor of Purchaser, and the Court should enter an order, preliminarily and permanently, enjoining Sellers from taking any steps to terminate and or attempt to allege a right to terminate the Agreement, including filing any documents with land records of the District of Columbia inconsistent with the continued full force and effectiveness of the Agreement, based upon the execution of the MT Sale Agreement and or any other event that has occurred as of or prior to the date of filing of this Complaint.

31. Purchaser requests that the Court enter injunctive relief in its favor and against Seller with respect to both Agreement and the Property by which Seller is prohibited from taking any step to sell or declare the Agreement terminated, including filing any documents with land records of the District of Columbia inconsistent with the continued full force and effectiveness of the Agreement.

WHEREFORE, the foregoing considered, Purchaser prays that the Court enter judgment in its favor and against Defendants as follows:

A. For judgment orders entering declaratory relief in favor of Purchaser declaring that no condition has arisen which gives rise to the Sellers right to terminate the Agreement as defined by Section 5.8(C) therein, that Sellers may not declare a termination, pursue to sell the Property, or take any such action as would operate to cause Purchaser to lose its rights under the Agreement to purchase the Property or forfeit its right as defined therein and ordering that the Agreement is in full force and effect;

B. For preliminary and permanent injunctive relief in favor of Purchaser and against Sellers by which Sellers are restrained from taking any step legal or otherwise to terminate the Agreement to cause Plaintiff to forfeit its rights defined by the Agreement and with respect to the Property, and to refrain from any act which would cause damage to Purchaser or disturb Purchaser's rights pursuant to the Agreement, including filing any documents with land records of the District of Columbia inconsistent with the continued full force and effectiveness of the Agreement;

C. Sellers pay costs and attorney's fees of Purchaser; and

D. Grant Purchaser damages and such other relief as may be appropriate.

Respectfully submitted,

By: /s/ Mazin I. Elias, Esq.  
Mazin I. Elias, Esq., Bar #437069  
OFFIT KURMAN, P.A.  
4800 Montgomery Lane, 9<sup>th</sup> Floor  
Bethesda, MD 20814  
(240) 507-1708 / (240) 507-1735 (fax)  
[MElias@offitkurman.com](mailto:MElias@offitkurman.com)  
*Counsel for LDP Acquisitions LLC*

**VERIFICATION**

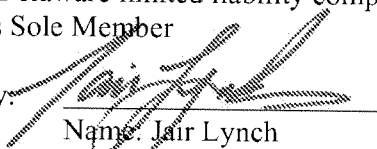
The undersigned, being the Authorized Representative of LDP Acquisitions, LLC having read the foregoing Complaint, states upon personal knowledge, that the contents of the Complaint are true and accurate.

September 28, 2017

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By:

By: LDP Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By:   
Name: Jair Lynch  
Title: Authorized Representative

Execution Copy

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT OF PURCHASE AND SALE** (“**Agreement**”) is made as of April 6, 2017 (“**Contract Date**”), between (i) LDP ACQUISITIONS LLC, a Delaware limited liability company (“**Purchaser**”), and (ii) FELIX NELSON AYALA and MARIA E AYALA (“**Ayala**” or “**Seller**”).

### ARTICLE 1. INTERPRETATION

**1.1 Definitions.** For purposes of this Agreement, the following capitalized terms shall have the meanings indicated:

1.1.1 **Action:** any action, suit, arbitration, governmental investigation or other legal proceeding.

1.1.2 **Apportionment Time:** as defined in Section 7.6.

1.1.3 **Appraiser:** shall mean means any individual who is a fully-accredited MAI appraiser having at least 10 years of experience in the market in which the Project is located.

1.1.4 **Appraised Value:** shall mean a value for the Property determined by a process in which Purchaser and Seller shall each select (and notify the other party of the selection and identity of) an Appraiser within ten (10) days after the date that the closing condition specified in Section 6.1.3 is waived or deemed waived in accordance with the terms thereof (“**Determination Date**”). Each Appraiser thus selected shall within 21 days after the date of the Determination Date report its appraisal in writing simultaneously to both parties. If the lower of the two appraisals is at least 90% of the higher of the two appraisals, the average of the two appraisals shall be the Appraised Value. If the lower of the two appraisals is less than 90% of the higher of the two appraisals, the two Appraisers shall, within 30 days after the date of the Determination Date, select (and notify the parties of the selection and identity of) a third Appraiser who shall within 40 days after the date of the Determination Date report its appraisal in writing simultaneously to the parties, and the Appraised Value shall be the average of the two appraisals which deviate the least. Each appraisal must be made on an all-cash sale basis without reduction for any lien or encumbrance against the Property. In each instance where two Appraisers select a third Appraiser, the two Appraisers shall share with the third Appraiser all documents, research and other information acquired by them with respect to the Property. The fees and expenses of each Appraiser shall be borne by the party selecting such Appraiser and the fees and expenses of the third Appraiser, if any, shall be divided equally between the parties. If the Appraiser selected by one of the parties fails to deliver its appraisal when due, such party’s Appraiser shall be excused from proceeding with the appraisal and the Appraiser appointed by the party whose Appraiser timely delivered its appraisal shall make the final determination.

1.1.5 **Assignable Contracts:** as defined in Section 5.3.

1.1.6 **Closing:** the consummation of the purchase and sale of the Property as contemplated by this Agreement.

1.1.7 **Closing Date:** As defined in Section 7.1.

1.1.8 **Code:** the Internal Revenue Code of 1986, as amended.

1.1.9 **Contracts:** as defined in Section 3.10.

1.1.10 **Contract Date:** as defined in the Preamble.

1.1.11 **Contribution Agreement:** means an agreement the form of which shall be agreed upon by the parties prior to the Closing which outlines the terms pursuant to which the Sellers make a contribution to the Project in the event the Sellers exercise the option set forth in Section 2.1.2. In addition to the other terms to be agreed upon by the Purchaser and Seller, the terms of the Contribution Agreement shall provide that Seller's equity investment in the Project would be paid out at the project-level and treated equally in the return waterfall with the investor equity anticipated at the time of Closing as required to complete the Project.

1.1.12 **Deposit:** as defined in Section 2.3.

1.1.13 **Due Diligence Period:** the period commencing on the Contract Date and expiring at 5:00 p.m. Eastern Time on the date that is sixty (60) calendar days thereafter.

1.1.14 **Encumbrance:** any lien, mortgage, deed of trust, security interest, pledge, charge, option, encroachment, easement, covenant, lease, reservation or restriction of any kind.

1.1.15 **Environmental Laws:** all Legal Requirements relating to the protection of the environment or to human health, or regulating the manufacture, use or disposal of Hazardous Substances.

1.1.16 **Escrow Agent:** the Title Company, in its capacity as escrow agent under this Agreement.

1.1.17 **Hazardous Substance:** any pollutant, contaminant or any toxic, radioactive or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, lead-based paint, and asbestos, in each case as regulated under Environmental Laws.

1.1.18 **Lease Modification:** as defined in Section 5.4.

1.1.19 **Leases:** as defined in Section 3.8.

1.1.20 **Legal Requirement:** any federal, state, local or municipal constitution, law, ordinance, rule, order, regulation or statute.

1.1.21 **Martha's Table Properties:** the real estate properties consisting of two lots located at 2114 14<sup>th</sup> St, NW, Washington, DC 20009, containing 19,200 square feet of land, and 2120 14<sup>th</sup> St NW, Washington, DC 20009, containing 7,200 square feet of land, and more particularly described in the District of Columbia land record as Square 0203 Lots 0096 and 0809, respectively.

1.1.22 **Martha's Table Closing:** means the consummation of the acquisition by Purchaser of all of the fee simple interest in the Martha's Table Properties in accordance with the terms of a definitive purchase and sale agreement by and between the Purchaser and owner of the Martha's Table Properties ("**Martha's Table PSA**").

1.1.23 **Permitted Exceptions:** as defined in Section 5.2.

1.1.24 **Project:** an expression of the present intent of Purchaser to combine the Martha's Table Properties with the Property (the "**Development Site**"), seek entitlements, and develop a mixed-use project.

1.1.25 **Property:** as defined in Section 2.1.

1.1.26 **Purchase Price:** as defined in Section 2.2.

1.1.27 **Purchaser's Representatives:** any officers, directors, employees, agents, contractors, consultants, representatives and attorneys of Purchaser or any direct or indirect owner of any beneficial interest in Purchaser who conduct or are otherwise involved in Purchaser's due diligence activities related to the Property.

1.1.28 **Rent:** as defined in Section 7.6.2.

1.1.29 **Seller Parties:** collectively, Seller; Manager; any direct or indirect owner of any beneficial interest in Seller; any officer, director, employee, or agent of Seller, Manager; or any direct or indirect owner of any beneficial interest in Seller or any officer, director, employee or agent thereof.

1.1.30 **Title Company:** Terra Nova Title & Settlement Services.

## **ARTICLE 2. SALE OF PROPERTY**

### **2.1 Sale and Purchase of Property.**

2.1.1 Subject to and in accordance with the terms of this Agreement, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, fee simple title to the land described on **Exhibit A** and all buildings, building systems and all other improvements and fixtures located thereon commonly known as 2118 14th Street NW, Washington, District of Columbia, and more particularly described in the District of Columbia land records as Square 0203 Lot 0010, together with all right, title and interest of Seller in (i) all rights, ways, easements, covenants, privileges and appurtenances thereto (including, without limitation, all development rights), all strips and gores, and any land lying in the bed of any street, road, avenue or alley, open or close, in front of or



adjoining the Land, to the center line thereof, (ii) all personal property located thereon, including, without limitation, all appliances, furniture, maintenance equipment, supplies tools and other personal property attached to, located at or used in connection with the operation of the Property or the improvements, (iii) all intangible property, including, without limitation, all permits, licenses, certificates of occupancy, entitlements and government approvals which relate to the operation of the foregoing, to the extent same are assignable, all tradenames used in connection with the Property, any architectural or engineering studies related to the development of the Property or the construction or operation of the improvements, all assignable unexpired warranties and guaranties (expressed or implied) issued to or held by Seller, (iv) the Leases and related security deposits and (v) the Assignable Contracts (collectively, "**Property**").

2.1.2 At any time after the date hereof and at least five (5) business days prior to the expiration of the Due Diligence Period, Seller may provide written notice (the "**Contribution Option Notice**") to Purchaser of Seller's binding intent to contribute an amount equal to not less than Five Hundred Thousand Dollars (\$500,000) nor more than an amount equal to the entire Purchase Price to the Project (the "**Contribution Option**"). If Seller sends the Option Notice, Purchaser and Seller shall negotiate in good faith the terms of the Contribution Option and definitively set forth such terms in the Contribution Agreement.

**2.2 Purchase Price.** The purchase price for the Property shall be the greater of (i) a sum equal to \$3,000,000.00 or (ii) the resulting calculation upon either of the following to occur (a) in the event the Martha's Table Closing occurs, a thirty percent (30%) premium to the price per FAR (floor to area ration) square foot of the Martha's Table Purchase Price, or (b) in the event there is a Closing hereunder, but the Martha's Table Closing does not occur, a thirty percent (30%) premium to the Appraised Value of the Property (the "**Purchase Price**"), subject, however, to the adjustments and pro-rations provided for herein. Purchaser shall pay the Purchase Price at Closing by wire transfer of immediately available funds, subject to such adjustments and pro-rations as set forth herein, less the Deposit (as defined herein). For the sake of clarity in respect to the calculation of the Purchase Price under Section 2.21 above, should the Martha's Table Purchase Price be One-Hundred Dollars (\$100) per FAR square foot, the Purchase Price for purposes of Section 2.2(a) will be One Hundred Thirty (\$130.00) per FAR square foot. To further clarify the above, in the event that the Martha's Table Purchase Price shall be \$60.00 per FAR square foot, the Purchase Price shall be \$3,000,000.00.

### **2.3 Deposit.**

2.3.1 Within five (5) business day after the Contract Date, Purchaser shall deliver to Escrow Agent a refundable deposit in cash or by wired funds in an amount of Ninety Thousand and No/100 Dollars (\$90,000.00) (together with all interest thereon, the "**Initial Deposit**"). Within five (5) business days after the date, if any, (the "**Martha's Table Contract Date**") that the Purchaser (or an affiliate of Purchaser) executes a definitive Martha's Table PSA, Purchaser shall deliver to Escrow Agent a refundable deposit by wired funds an amount equal to (i) the product of the Purchase Price as determined Section 2.2(a) multiplied by three (3) percent minus (ii) the amount of the

Initial Deposit (such amount, together with the Initial Deposit with all interest on such sums, the “**Deposit**”). At Closing, the Deposit shall be credited against the Purchase Price. If Purchaser does not timely deliver the Deposit, this Agreement shall terminate and be of no further force and effect except those provisions that explicitly survive the termination of this Agreement.

2.3.2 From and after the expiration of the Due Diligence Period, the Deposit shall be non-refundable, subject to the rights of Purchaser with respect thereto set forth in this Agreement.

### **ARTICLE 3. SELLER’S REPRESENTATIONS AND WARRANTIES**

Seller hereby represents and warrants to Purchaser as follows:

**3.1 Good Standing.** Seller is a limited liability company duly formed and validly existing under the laws of the State of Delaware.

**3.2 Due Authorization.** Seller has the power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated by this Agreement have been duly and validly authorized by all requisite actions of Seller.

**3.3 No Violations.** The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated by this Agreement will not: (i) violate any Legal Requirement or any order of any court or governmental authority that is binding on Seller or the Property; or (ii) result in a breach of or default under any contract or other agreement to which Seller is a party or by which the Property is bound or any provision of the organizational documents of Seller.

**3.4 Bankruptcy.** Seller is not the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

**3.5 Litigation.** Other than the pending criminal matter in Prince George’s County Maryland instituted against Felix Nelson Ayala, there are no Actions pending or, to the knowledge of Seller, threatened against Seller before any court or governmental authority. There are no Actions pending or, to the knowledge of Seller, threatened against Seller or affecting the Property before any court or governmental authority, an adverse determination of which would materially adversely affect the Property or Seller’s ability to enter into or perform this Agreement.

**3.6 Foreign Person.** Seller is not a “foreign person” as that term is defined in Section 1445 of the Code.

**3.7 Condemnation.** No taking by power of eminent domain or condemnation has been instituted or, to the knowledge of Seller, threatened with respect to the Property or any portion thereof. Seller has received no written notice of any condemnation proceeding affecting the Property currently pending. If, prior to the Closing Date, Seller

has received or receives any such notice or threat, Seller shall immediately notify Purchaser of such notice or threat and provide a copy thereof to Purchaser.

**3.8 Leases.** There are no leases, licenses or other occupancy agreements that affect the Property as of the Contract Date other than those agreements set forth on Schedule 3.8 attached hereto (the "**Leases**"). Prior to the Contract Date, Seller provided to Purchaser a correct and complete copy of each Lease in effect as of the Contract Date, as well as any guarantees, renewals, extensions, expansions and modifications thereof, which, together with the amount of any security deposits or letters of credit relating thereto, are listed on Schedule 3.8, and any such guarantees, renewals, extensions, expansions or modifications thereto so listed constitute all of the guarantees, renewals, extensions, expansions and modifications of the Leases.

3.8.1.1 The Leases are in full force and effect. Except as set forth on Schedule 3.8, there is no default by Seller, as lessor, thereunder, and Seller has not given or received any written notice of default pertaining to any of the Leases. To Seller's actual knowledge, except as set forth on Schedule 3.8, there is no default by any lessee thereunder. If, prior to the Closing Date, Seller has given, gives, has received or receives any such notice, Seller will promptly notify Purchaser (within two (2) business days of Seller's receipt) of such notice and provide a copy thereof.

3.8.1.2 Except as set forth on Schedule 3.8, the lessees under the Leases are not, and shall not become, entitled to any concession, rebate, allowance, credit, setoff or free rent of any kind or nature whatsoever for any period. Any Lease provision calling for any concession, rebate, allowance, credit, setoff or free rent of any kind or nature whatsoever for any period has already been provided and satisfied in full.

3.8.1.3 Except as set forth on Schedule 3.8, no prepayment of rent or other sums due to the lessor under the Leases has been received or is held by Seller.

3.8.1.4 Except as set forth on Schedule 3.8, all work required or agreed to be performed by Seller, as lessor, has been performed under the Leases.

3.8.1.5 Other than the Leases, Seller has not made any, and Seller is not aware of any leases, licenses or other agreements permitting any person or entity to occupy or use any portion of the Property.

3.8.1.6 Except as set forth on Schedule 3.8, all brokerage commissions and other compensation and fees payable by reason of the Leases have been paid in full.

3.8.1.7 Attached hereto as Schedule 3.8 is a true and complete copy of the most current rent roll for the Property, prepared in the ordinary course of business by Seller as of the date set forth therein. Seller shall provide Purchaser with true

and complete copies of updated rent rolls on April 15, 2017 for the period through March 31, 2017 and upon request of Purchaser through the Closing Date.

**3.9** To Seller's knowledge, Seller has obtained all permits, licenses and consents necessary to operate the Property, which permits, licenses and consents are listed on Schedule 3.9. To Seller's knowledge, all such permits, licenses and consents are in full force and effect. Seller has not received written notice of any application having been filed to cause the Property or any portion thereof to be considered a historic landmark pursuant to the Historic Landmark and Historic Protection Act of 1978, as amended. Seller has not received any written complaint, order, citation or notice of any failure of the Property to comply with any applicable governmental requirements in regard to the use, occupation and construction thereof, including, but not limited to, environmental, zoning, platting and other land use requirements, from any governmental agency having authority and jurisdiction over the Property, or written notice of any violations or investigations relating thereto. If, prior to the Closing Date, Seller has received or receives any such notice, complaint, order or citation, Seller will promptly notify Purchaser, within two (2) business days of Seller's receipt, of such notice, complaint, order or citation (it being agreed that in any event such notice shall be delivered prior to the end of the Due Diligence Period with respect to all notices, complaints, orders and citations received prior to the end of the Due Diligence Period), provide a copy thereof and state in such notice both Seller's good faith estimate of the cost of the corrections or other work necessary to cure the applicable failure and whether Seller will make (or pay for) some or all of the corrections or other work necessary to cure the applicable failure (and, if Seller will make some, but less than all, of such corrections or other work, the extent of the corrections or other work that Seller will make). (b)

**3.10 Contracts.** There are no service agreements, management, operating, maintenance, repair, equipment leases or other contracts (collectively, "**Contracts**") that affect the Property as of the Contract Date other than those agreements set forth on Schedule 3.9 attached hereto. Prior to the Contract Date, Seller provided to Purchaser a correct and complete copy of each Contract in effect as of the Contract Date. Except as indicated on Schedule 3.9, each Contract may be terminated upon no more than thirty (30) days written notice without cause. Seller is not in default under any Contract, and to Seller's knowledge, the other party to each such Contract is not in default thereunder.

**3.11 No Options.** Other than Purchaser, as of the Contract Date, no person or entity has been granted a right of first refusal, right of first negotiation, option or other contractual or statutory right to purchase all or any part of the Property by or on behalf of Seller.

**3.12 Seller's Patriot Act Representation.** Seller is not listed in Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended ("**Executive Order 13224**"), and to Seller's knowledge no other persons or entities holding any legal or beneficial interest whatsoever in Seller are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind

to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13324, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. Neither Seller nor any holder of any direct or indirect equitable, legal or beneficial interest in the Seller is the subject of any law blocking or prohibiting transactions with persons who commit, threaten to commit or support terrorism, including the USA Patriot Act. Without limiting the foregoing, Seller does not engage in any dealings or transactions, or is not otherwise associated with any such persons or entities or any "forbidden entity," including the governments of Cuba, Iran, North Korea, Myanmar, Syria and Sudan.

**3.13** Seller has not received any written notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way or easements which may affect the Property. If, prior to the Closing Date, Seller has received or receives any such notice, Seller will promptly notify Purchaser, within two (2) business days of Seller's receipt, of such notice and provide a copy thereof.

**3.14** All bills and claims for labor and construction performed and materials, equipment or services furnished to Seller or on Seller's behalf for the benefit of the Property for all periods prior to the Closing Date, will be paid in full as of the Closing Date, to the extent practicable, or, if not paid, will be adjusted as of the Closing Date in accordance with Section 7.6. As of the Closing Date, there will be no mechanic's liens or materialmen's liens (whether or not perfected) on the Property for work or materials furnished to Seller or on Seller's behalf.

**3.15** Except as set forth in the report(s) described on Schedule 3.15, (a) to Seller's knowledge, no Hazardous Materials (as hereinafter defined) exist on or about the Property; (b) no Hazardous Materials were generated or permitted by Seller on or about the Property; (c) to Seller's knowledge, the Property has not been used for the storage, manufacture or disposal of Hazardous Materials; (d) the Property has not been used by Seller for the storage, manufacture or disposal of Hazardous Materials; (e) Seller has complied in all material respects with all Environmental Requirements (as hereinafter defined) affecting the Property and (f) to Seller's actual knowledge, the Property does not contain any underground storage tanks or other facilities for the storage or disposal of Hazardous Materials.

**3.16** Seller agrees to keep comparable insurance in force and pay the premiums thereon through date of Closing hereunder.

**3.17** "To the knowledge of Seller" or any similar phrase shall mean the present actual knowledge, without taking into account any constructive or imputed knowledge, of Felix Nelson Ayala; provided, however, neither the foregoing nor anything else in this Agreement shall subject Felix Nelson Ayala to any personal liability.

If at or prior to Closing, Purchaser obtains actual knowledge that any representation or warranty of Seller under this Agreement is inaccurate in any respect, but nonetheless elects to proceed to Closing, Purchaser shall be deemed to have waived any right to make a claim arising out of such inaccuracy. If any representation or warranty of Seller under this Agreement that was accurate on the Contract Date becomes inaccurate in any material respect at or prior to Closing for any reason, then Purchaser shall have the rights set forth in Section 8.3 below but such inaccuracy shall not be deemed a default by Seller hereunder.

Purchaser shall have the right to bring a claim for a material misrepresentation of any representation or warranty of Seller under this Agreement only if Purchaser notifies Seller of such claim on or before the twelve (12<sup>th</sup>) month anniversary of the Closing Date. Except for breaches that are willful, Seller shall have no liability to Purchaser for breach of any of the Seller's Obligations unless the claims for all such alleged breaches collectively aggregate more than Twenty-five Thousand and No/100 Dollars (\$25,000.00) in which event the full amount of such alleged claims shall be actionable up to the Cap (as defined in this Section). Notwithstanding anything to the contrary herein, except for breaches that are willful, the maximum aggregate amount which may be awarded to or collected by Purchaser under this Agreement, including without limitation, for any breach of Seller's Obligation(s) contained herein and any and all documents executed pursuant hereto or in connection herewith, including, without limitation, the Deed, Bill of Sale and the Assignment and Assumption Agreement or for any reason whatsoever shall under no circumstances whatsoever exceed One Hundred Thousand AND NO/100 DOLLARS (\$100,000.00) (the "Cap"); provided, however, that such limitation shall not apply to (and such Cap shall be deemed not to include) amounts payable by Seller under Section 10.15 below. This provision shall survive Closing..

Except as provided in the preceding paragraph, no constituent partner, member, shareholder or other person or entity in or agent of Seller nor any advisor, attorney, trustee, director, employee, beneficiary, shareholder, member, partner, participant, representative or agent of any partnership, limited liability company, corporation, trust or other entity that has or acquires direct or indirect interest in Seller shall have any personal liability directly or indirectly under or in connection with this Agreement or any amendment or amendments to this Agreement made at any time or times heretofore or hereafter and Purchaser and its successors and assigns shall look solely to Seller's assets for the payment of any claim or for any performance and Purchaser on behalf of itself and its successors and assigns hereby waives any and all such personal liability. This provision shall survive Closing or any termination of this Agreement.

If this Agreement expires or is terminated by either party or if Closing is not consummated for any reason and in either such case the Deposit is paid to the applicable party in accordance with the terms hereof, then the representations and warranties set forth herein shall be automatically extinguished upon such payment.

## ARTICLE 4. PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser hereby represents and warrants to Seller as follows:

**4.1 Good Standing.** Purchaser is a limited liability corporation, duly organized, validly existing and in good standing under the laws of Delaware.

**4.2 Due Authorization.** The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated by this Agreement have been duly and validly authorized by all requisite actions of Purchaser.

**4.3 No Violations.** The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated by this Agreement will not: (i) violate any Legal Requirement or any order of any court or governmental authority that is binding on Purchaser; or (ii) result in a breach of or default under any contract or other agreement to which Purchaser is a party or any provision of the organizational documents of Purchaser.

**4.4 Bankruptcy.** Purchaser is not the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

**4.5 Litigation.** There are no Actions pending or, to the knowledge of Purchaser, threatened against Purchaser before any court or governmental authority, an adverse determination of which would materially adversely affect Purchaser's ability to enter into or perform this Agreement.

**4.6 Purchaser's Patriot Act Representation.** Neither Purchaser nor, to Purchaser's actual knowledge, any member of Purchaser is listed in Executive Order 13224, and Purchaser has no present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Purchaser are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13324, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. Neither Purchaser nor any holder of any direct or indirect equitable, legal or beneficial interest in the Purchaser is the subject of any law blocking or prohibiting transactions with persons who commit, threaten to commit or support terrorism, including the USA Patriot Act. Without limiting the foregoing, Purchaser does not engage in any dealings or transactions, or is not otherwise associated with any such persons or entities or any "forbidden entity," including the governments of Cuba, Iran, North Korea, Myanmar, Syria and Sudan.

## ARTICLE 5. ACTIONS PENDING CLOSING

### 5.1 Due Diligence.

5.1.1 Seller has provided to Purchaser or shall provide to Purchaser no later than five (5) business days after the date hereof the documents identified on Schedule 5.1.1 hereto (“**Due Diligence Documents**”). During the Due Diligence Period, Seller will allow Purchaser and Purchaser’s Representatives access to the Property for the purpose of conducting inspections, investigations and other due diligence activities (including, but not limited to, surveys, tests, studies, inquiries, appraisals, reviews, and/or evaluations) (each, a “**Due Diligence Activity**”) reasonably related to the purchase of the Property; provided, however, Purchaser shall comply with the following covenants and conditions:

5.1.1.1 Such access shall be at reasonable times during regular business hours and shall not interfere with the operation of the Property or the rights of tenants or the use by any tenant of any portion of the Property. Purchaser shall coordinate with Seller prior to and during each visit to the Property and representatives of Seller may accompany Purchaser and Purchaser’s Representatives during each such visit. Seller or its designated representative shall have the right to pre-approve any invasive testing of the Property (such approval not to be unreasonably withheld). All due diligence shall be at Purchaser’s sole expense and shall be conducted in accordance with applicable laws, including without limitation, laws relating to worker safety and the proper disposal of discarded materials.

5.1.1.2 Purchaser or Purchaser’s Representatives may contact any tenant at the Property with prior written notice to Seller such notice may be tendered by email.

5.1.1.3 Except in connection with the preparation of a so-called “Phase I” environmental report, a “Phase II” environmental report, as required, and a geotechnical report with respect to the Property, Purchaser and Purchaser’s Representatives shall not contact any governmental official or representative regarding the Property without Seller’s prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, if Seller’s consent to any such governmental contacts is obtained by Purchaser, Seller shall be entitled to receive at least five (5) days prior written notice of the intended contact and to have a representative present when Purchaser or Purchaser’s Representatives have any such contact with any governmental official or representative.

5.1.1.4 While on the Property or otherwise in connection with any activities conducted by Purchaser or Purchaser’s Representatives in connection with Purchaser’s due diligence, Purchaser will comply, and will cause all of Purchaser’s Representatives to comply, with all applicable laws and regulations, and insurance requirements. Purchaser shall cause all Purchaser’s Representatives to be aware of this Agreement and the obligations of such parties hereunder.



5.1.1.5 Prior to such time as Purchaser or any Purchaser's Representative enters the Property, Purchaser shall (i) obtain policies of general liability insurance which insure Purchaser and Purchaser's Representatives with liability insurance limits of not less than \$2,000,000 combined single limit for personal injury and property damage and name Seller and Manager as additional insureds and which are with such insurance companies, provide such coverages and carry such other limits as Seller shall reasonably require, and (ii) provide Seller with certificates of insurance evidencing that Purchaser has obtained the aforementioned policies of insurance. Purchaser shall maintain such insurance in full force and effect until the later of Closing or the termination of this Agreement.

5.1.1.6 In no event shall Purchaser or Purchaser's Representatives bring any hazardous, toxic or contaminated materials or substances on the Property, including without limitation any Hazardous Materials. As used herein, the term "**Hazardous Materials**" shall mean all materials and substances subject to any environmental laws (collectively, "**Environmental Laws**") applicable to the Property as of the date of this Agreement, including, without limitation, (i) all substances which are now or hereafter designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq. ("**FWPCA**"), (ii) any element, compound, mixture, solution, or substance which is now or hereafter designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("**CERCLA**") or any regulations promulgated under CERCLA, (iii) any hazardous waste having the characteristics that are now or hereafter identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("**RCRA**") or any regulations promulgated under RCRA, (iv) any toxic pollutant now or hereafter listed under Section 307(a) of FWPCA, (v) any hazardous air pollutant which is now or hereafter listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7401, et seq., (vi) any imminently hazardous chemical substance or mixture with respect to which action now or hereafter has been taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., (vii) "hazardous materials" within the meaning of the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., (viii) gasoline, diesel fuel or other petroleum hydrocarbons; (ix) asbestos and asbestos containing materials in any form whether friable or non-friable; (x) radon gas; (xi) polychlorinated biphenyls; and (xii) mold or any additional element or compound contained in the list of hazardous substances now or hereafter adopted by the United States Environmental Protection Agency.

5.1.2 Purchaser shall repair promptly any physical damage caused by Purchaser, Purchaser's Representatives and/or any of their respective Due Diligence Activities and shall immediately return the Property to the condition existing prior to Purchaser's due diligence. The provisions of this Section 5.1.2 shall survive the termination of this Agreement.

5.1.3 Purchaser agrees to indemnify, defend and hold Seller harmless from and against any physical damage to the Property (including, without limitation, the cost of restoring the Property to its original condition) or physical injury to any persons caused

by Purchaser or its agents and contractors in the course of exercising any Due Diligence Activity. The indemnification obligations contained in this Section shall survive termination of this Agreement.

5.1.4 Purchaser hereby agrees that all of the Due Diligence Documents are confidential and shall not be distributed or disclosed by Purchaser to any person or entity not affiliated with Purchaser. If the transaction described herein fails to close for any reason whatsoever, Purchaser shall return to Seller all copies of the Due Diligence Documents which Seller or its agents may have delivered to Purchaser in accordance with this Section 5.1

5.1.5 The provisions of this Section 5.1 replace and supersede any prior written agreements between Purchaser and Seller regarding Due Diligence Activities or any other inspection activities with respect to the Property undertaken from and after the date hereof. Any such prior written agreements shall terminate and be of no further force and effect as to any Due Diligence Activities or any other inspection activities from and after the date hereof.

**5.2 Title.** Seller shall convey to Purchaser good and marketable fee simple title to the Property subject only to (i) the lien of real property taxes, and water and sewer rents, not yet due and payable, (ii) the rights of tenants and other occupants under the Leases, as tenants only, (iii) the matters set forth on Schedule 5.2 attached hereto and (iv) any other matters caused by Purchaser or any Purchaser Representative or approved by Purchaser (collectively, "**Permitted Exceptions**"). At or prior to Closing, Seller shall satisfy and release all mortgages, deeds of trust, mechanic's liens, materialman's liens, judgment liens and other liens securing a monetary amount other than any such liens imposed by, caused by or resulting from the actions or inactions of Purchaser. Prior to Closing, Seller shall not cause or permit any modification to Seller's title to the Property without Purchaser's prior written consent (except to the extent provided in Section 5.4 or Section 5.5).

**5.3 Contracts.** On or before the end of the Due Diligence Period, Purchaser shall notify Seller in writing which Contracts, if any, Purchaser desires to assume at Closing (any such contract, an "**Assignable Contract**"). From the Contract Date until the Closing Date, Seller may enter into Contracts without Purchaser's consent provided such Contracts (i) reflect market terms and rates, (ii) are on an arm's length basis, (iii) are not with parties that are affiliates of, or are under common control with, Seller, (iv) are terminable without fee or penalty upon not less than thirty (30) days' prior notice and (v) Seller provides a copy of such contract to Purchaser. Contracts entered into in accordance with the previous sentence shall constitute Assignable Contracts if in effect as of the Closing Date. On or before the Closing Date, Seller shall terminate at its own cost and expense any Contracts that are not Assignable Contracts.

**5.4 Leasing.** From and after the expiration of the Contract Date and until such time as Closing shall occur under this Agreement, or this Agreement shall terminate, or

Closing shall fail to occur within the timeframes provided for herein beyond any and all extensions of any timeframes for Closing to occur, Seller shall obtain Purchaser's written consent to enter into any proposed modification, amendment, renewal or termination of any Lease or to the assignment sublease or other transfer of a tenant's interest in, any existing Lease (each a "**Lease Modification**"). Such consent may be granted or withheld by Purchaser in Purchaser's sole discretion. Purchaser shall notify Seller of its objection to any such Lease Modification within five (5) Business Days following its receipt of notice of such Lease Modification. If Purchaser objects to a proposed Lease Modification, Seller shall not execute such Lease Modification.

**5.5 As-Is.** Except for Seller's express covenants, representations and warranties contained in this Agreement or in any of the documents executed by Seller in connection with the Closing (collectively the "**Express Representations**"), Purchaser acknowledges and agrees that, Seller has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the nature, quality or condition of the Property, including, without limitation, the water, soil and geology, (b) the income to be derived from the Property and/or the financial wherewithal of any tenant therein, (c) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, or (g) the disposal or existence, in or on the Property, of any Hazardous Materials. Purchaser further acknowledges and agrees that, except for the Express Representations, Purchaser is relying on its own investigation of the Property and not on any information provided or to be provided by Seller. PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. PURCHASER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT WITH RESPECT TO THE EXPRESS REPRESENTATIONS, AND AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS."

**5.6 Joint Pursuit Activities:** Purchaser will lead, initiate and be responsible for all activities and related costs for due diligence and other pursuit activities related to acquiring and combining the Martha's Table Properties and the Property. Purchaser will share the relevant data with Seller in preparation for any written offers on the Martha's Table Properties based on a combined development site (the "**Joint Pursuit Activities**"). Purchaser and Seller will seek to participate in any marketing and sale process relating to the offer and sale of the Martha's Table Properties. None of Seller, Purchaser or their respective affiliates shall enter into an agreement, or allow an agreement to be entered into, with respect to the acquisition of the Martha's Table Properties with any person or

entity that would prevent the consummation of the transactions contemplated hereby, or the combining of the Martha's Table Properties with the Property as contemplated by the Project. Neither party may publicly announce details of the transaction between the parties without the other party's consent.

**5.7 No Shopping.** Following the execution of this Agreement, neither Seller nor any affiliate of Seller shall enter into an agreement, letter of intent, or other understanding, including any formal or informal expression of interest, with respect to the sale, financing, option or lease of the Property, with any person or entity other than Purchaser, except as needed for the existing lease under the existing term until 2019 with the current tenant.

**5.8 Study Periods.** (a) On or before expiration of the expiration of the Due Diligence Period, Purchaser may terminate this Agreement for any reason in Purchaser's sole discretion by written notice to Seller ("**Termination Notice**"). If Purchaser sends a Termination Notice, then the Deposit will be returned to the Purchaser, and thereupon this Agreement will be of no further force or effect.

(b) At any time after expiration of the Due Diligence Period, the Purchaser may deliver written notice to the Seller that Purchaser is terminating this Agreement because the acquisition of the Martha's Table Properties is not feasible and the Purchaser is no longer pursuing the acquisition of the Martha's Table Properties (the "**Martha's Table Feasibility Termination Notice**"). If Purchaser sends a Martha's Table Feasibility Termination Notice, then the Deposit will be returned to the Purchaser, and thereupon this Agreement will be of no further force or effect. Notwithstanding the preceding, the Purchaser may not send a Martha's Table Feasibility Termination Notice at any time after Purchaser has executed the Martha's Table PSA.

(c) At any time after execution of the Martha's Table PSA, the Purchaser may deliver written notice to the Seller that the Purchaser is terminating this Agreement because Purchaser has terminated the Martha's Table PSA because of a default or breach by seller under the Martha's Table PSA ("**Martha's Table PSA Termination Notice**"). If Purchaser sends a Martha's Table PSA Termination Notice, then the Deposit will be returned to the Purchaser, and thereupon this Agreement will be of no further force or effect. Notwithstanding anything herein to the contrary, in the event that Purchaser breaches its obligation to consummate the transaction contemplated by the Martha's Table PSA (and any cure period thereunder has expired), or is unwilling to enter into a fully executed Martha's Table PSA, then Seller shall have the right to terminate this Agreement upon five (5) days written notice sent to Purchaser and thereupon the Deposit shall be returned to the Purchaser. Notwithstanding anything herein to the contrary, in the event that it shall become impossible or impracticable for Purchaser to acquire the Martha's Table Properties, then Seller shall have the right to terminate this Agreement upon five (5) days written notice sent to Purchaser and thereupon the Deposit shall be returned to the Purchaser, unless prior to the expiration of such five (5) day period Purchaser shall indicate its intent to waive the closing condition set forth in Section 6.1.3 hereof, and in such event this Agreement shall continue in full force and effect in accordance with its terms. In the event that Purchaser shall terminate this Agreement for

any reason whatsoever, other than the breach of this Agreement by Seller, Purchaser shall reimburse Seller for Seller's reasonable attorneys fees expended to consummate this transaction.

## ARTICLE 6. CONDITIONS TO CLOSING

**6.1 Purchaser's Conditions to Closing.** The obligation of Purchaser to consummate the Closing shall be subject to the satisfaction of each of the following conditions, any or all of which may be waived in whole or in part by Purchaser:

6.1.1 Each of Seller's representations and warranties set forth in this Agreement shall be correct in all material respects as of the Closing Date as if remade as of the Closing Date.

6.1.2 The Title Company shall be prepared to issue immediately to Purchaser an ALTA form owner's policy of title insurance insuring good and marketable fee simple title to the Property in an aggregate amount of not less than the Purchase Price, effective as of the Closing Date, at regular rates, free and clear of all encumbrances except for the Permitted Exceptions.

6.1.3 The Martha's Table PSA shall have been executed by the Purchaser, and the Martha's Table Closing contemplated thereunder shall occur immediately prior to or be scheduled to occur concurrent with the Closing hereunder, provided, however, this condition shall be deemed waived by the Purchaser to the extent both (a) the Martha's Table Properties are sold to a third party unaffiliated with the owner other than pursuant to the Martha's Table PSA, and (b) Purchaser fails to send to Seller a Martha's Table PSA Termination Notice within thirty days of the closing of such Martha's Table Properties Third Party Acquisition.

6.1.4 Seller shall deliver to Purchaser estoppel certificates in respect to the Leases in form and substance reasonably satisfactory to the Purchaser ("**Estoppel Certificates**").

**6.2 Failure of Purchaser's Condition.** In the event of the failure of any condition precedent set forth in Section 6.1, Purchaser, at its sole election, may (i) terminate this Agreement in which event neither party to this Agreement shall thereafter have any further rights or liabilities under this Agreement other than those that expressly survive termination of this Agreement and, subject to Section 6.4 if such failure occurred as a result of a default by the Seller, the Deposit shall be returned to Purchaser, (ii) waive the condition and proceed to Closing, or (iii) extend the Closing Date for such additional period of time (not to exceed ninety (90) days in the aggregate) as may be reasonably required to allow Seller and/or Purchaser, as applicable, to satisfy such condition precedent.

**6.3 Seller's Conditions to Closing.** The obligation of Seller to consummate the Closing shall be subject to the satisfaction of each of the following conditions, any or all of which may be waived in whole or in part by Seller:

6.3.1 Each of Purchaser's representations and warranties set forth in this Agreement shall be correct in all material respects as of the Closing Date as if remade as of the Closing Date.

6.3.2 Simultaneous closing under the Martha's Table PSA.

6.3.3 Purchaser shall have performed all of its obligations under this Agreement required at or prior to Closing in all material respects.

**6.4 Failure of Seller's Condition.** In the event of the failure of any condition precedent set forth in Section 6.3, Seller, at its sole election, may (i) terminate this Agreement, and, if a court has finally determined that such failure results from a default by Purchaser, the Deposit shall be delivered to the Seller, and in any other circumstance the Deposit shall be delivered to Purchaser) and, thereafter, neither party to this Agreement shall have any further rights or liabilities under this Agreement other than those that expressly survive termination of this Agreement, (ii) waive the condition and proceed to Closing, or (iii) extend the Closing Date for such additional period of time (not to exceed thirty (30) days in the aggregate) as may be reasonably required to allow Purchaser to satisfy such condition.

## ARTICLE 7. CLOSING

**7.1 Closing.** Closing shall occur on a business day (the "Closing Date") designated by Seller within five (5) days following the satisfaction of the Closing Conditions, or such earlier as date as may be mutually agreed by the parties, provided, such date, subject to the satisfaction of all closing conditions, shall occur concurrently with the Martha's Table Closing to the extent the Martha's Table Closing occurs in connection with the Martha's Table PSA.

**7.2 Seller's Closing Deliveries.** At Closing, Seller shall deliver to Escrow Agent the following executed by Seller and, where applicable, notarized:

- (i) a special warranty deed in substantially the same form as attached hereto as **Exhibit B**,
- (ii) a general assignment in substantially the same form as attached hereto as **Exhibit C** (the "Assignment"),
- (iii) a bill of sale in substantially the same form as attached hereto as **Exhibit D**,
- (iv) a certificate confirming that its representations and warranties set forth in this Agreement are correct as if made on the Closing Date,
- (v) a title affidavit in the form reasonably required by the Title Company,

- (vi) a certification that Seller is not a "foreign" person in accordance with the requirements of the Code,
- (vii) a settlement statement showing the sources and uses of all Closing funds reasonably agreed to by Seller and Purchaser ("**Settlement Statement**"),
- (viii) such evidence of Seller's power and authority as may be reasonably required by the Title Company,
- (ix) to the extent the Contribution Option is exercised by Seller, the Contribution Agreement,
- (x) the Estoppel Certificates, and
- (xi) such other documents as are customary and as may be reasonably requested by Purchaser or the Escrow Agent to effectuate the transactions contemplated by this Agreement.

**7.3 Purchaser's Closing Deliveries.** At Closing, Purchaser shall deliver to Escrow Agent the following, to the extent applicable, executed by Purchaser and, where applicable, notarized:

- (i) the Purchase Price,
- (ii) a certificate confirming that its representations and warranties set forth in this Agreement are correct as if made on the Closing Date,
- (iii) the Settlement Statement,
- (iv) the Assignment,
- (v) to the extent the Contribution Option is exercised by Seller, the Contribution Agreement, and
- (vi) such other documents as are customary and as may be reasonably requested by Seller or the Escrow Agent to effectuate the transactions contemplated by this Agreement.

**7.4 Possession.** Seller shall deliver possession of the Property to Purchaser at Closing, free and clear of (A) all Encumbrances except for the Permitted Exceptions and (b) all tenancies and other occupancies except those related to the Leases.

**7.5 Costs.** Purchaser shall pay (i) the cost of any title insurance procured by Purchaser and the cost of a survey, (ii) the cost of Purchaser's Due Diligence Activities and any other due diligence with respect to the Property including costs related to any title commitments, surveys and other title and survey materials, (iii) one hundred percent (100%) of all District of Columbia real estate transfer and recordation taxes imposed in connection with the transfer of the Property, (iv) fifty percent (50%) of any (A) escrow

or settlement fees charged by Escrow Agent and (B) fees charged by an Appraiser, and (vi) Purchaser's attorneys' fees and expenses. Seller shall pay Seller's attorneys' fees and expenses.

## 7.6 Prorations.

7.6.1 At Closing, the following expenses in connection with the Property shall be computed and apportioned as of 12:01 am (local Washington, D.C. time) on the Closing Date ("**Apportionment Time**"), and the Purchase Price shall be adjusted to reflect the net increase or decrease in the Purchase Price resulting from all such apportionments: (i) all real property taxes and assessments and water and sewer rents, not yet due and payable, (ii) prepaid rents under Leases, (iii) costs and expenses (including any prepaid amounts) related to the Assignable Contracts, and (iv) except to the extent set forth in Section 7.6.2, below, any other items customarily prorated for similar properties in the District of Columbia.

7.6.2 All rents and other charges under the Leases (including base rent, percentage rent, expense reimbursement rent, reimbursement of tenant improvement costs, other charges and any additional rent) (collectively, "**Rents**") shall be apportioned in accordance with the following provisions:

7.6.2.1 All Rents which were earned and attributable to the period prior to the Closing Date shall (i) to the extent collected prior to the Closing Date, be retained by Seller and (ii) to the extent collected by Purchaser on or after the Closing Date, be paid to Seller in accordance with Section 7.6.2.2. Subject to Section 7.6.2.3, Rents that will be earned and attributable to the period beginning on the Closing Date and thereafter shall (a) to the extent collected by Seller prior to the Closing Date be retained by Seller, and (b) to the extent collected by Purchaser on or after the Closing Date, be retained be paid over to Seller.

7.6.2.2 All Rents received on or after the Closing Date by Purchaser in respect of any Lease shall be applied first to sums due and payable under the applicable Lease attributable to the period beginning on the Closing Date through the last day of the month in which such sums were received. Thereafter, any remaining sums shall be promptly paid to Seller to the extent of any Rents owing to Seller under the applicable Lease for periods prior to the Closing Date (except to the extent that Seller received a credit therefor at Closing).

7.6.2.3 During any period following Closing in which Seller receives the Rents, any and all amounts paid to Seller for obligations of landlord under the Lease, including real estate property insurance, operating expenses or other "triple-net" charges, real estate taxes and CAM charges (to the extent there are any such charges paid under the leases to Seller) shall be paid by Seller from the Rents to the appropriate party. Subject to the preceding sentence, until such time as a Lease Termination Event shall occur (as herein defined) Seller shall be entitled to keep 100% of the Rents prior to and following Closing. A Lease Termination Event, as used herein, shall mean (i) the execution of an agreement between Purchaser and the tenant under any lease terminating



the lease (either with or without compensation paid to the tenant), (ii) the termination of the lease and the eviction of the tenant via legal process due to a default of the tenant, or (iii) an agreement executed between Purchaser and any tenant which modifies or amends the lease providing rental abatements and any other concessions to tenant which would cause the Rents paid to Seller to cease prematurely or abate for a period of time.

7.6.2.4 Following any Lease Termination Event (except with respect to 7.6.2.3(ii)), Purchaser shall pay to Seller an amount equal to the balance of the Base Rent remaining for the current lease term (but not amounts for obligations of landlord under the Lease, including real estate taxes, property insurance, CAM, operating expenses or other "triple-net" charges, or any base rents payable during lease extension terms not yet exercised) which Seller failed to receive as a result of such Lease Termination Event ("Rent Damages"). If a Lease Termination Event under 7.6.2.3(ii) shall occur, Seller shall have no right to receive Rent Damages except to the extent of any amounts received by Purchaser pursuant to legal action to evict the tenant, recover unpaid rents due, against the tenant and any guarantors less any amounts expended by Purchaser in evicting the tenant and recovering such amounts. If Purchaser fails to pursue the tenant and any guarantors for damages as a result of a breach of the lease, Seller shall have the right to file an action against the tenant and any guarantors and seek recovery of its Rent Damages.

## **ARTICLE 8. ESCROW, DEFAULT, REMEDIES**

**8.1 Escrow Terms.** The Deposit shall be held and released by Escrow Agent in accordance with this Section 8.1.

8.1.1 Escrow Agent shall deposit the Deposit in an account in Escrow Agent's name in a commercial bank in the Washington metropolitan area. The Deposit shall be deposited and held in a federally-insured deposit account with a recognized commercial bank with branches in the District of Columbia.

8.1.2 Escrow Agent shall deliver the Deposit to Seller or Purchaser under the following conditions:

8.1.2.1 the Deposit shall be delivered to Seller following receipt by Escrow Agent of written demand therefor from Seller, stating that Purchaser has defaulted in the performance of its obligations under this Agreement and specifying the section of this Agreement which entitles Seller to receive the Deposit, if Purchaser shall not have given written notice of objection in accordance with Section 8.1.3; or

8.1.2.2 the Deposit shall be delivered to Purchaser following receipt by Escrow Agent of written demand therefor from Purchaser stating that Seller has defaulted in the performance of its obligations under this Agreement or that this Agreement was terminated under circumstances entitling Purchaser to the return of the Deposit, and specifying the section of this Agreement which entitles Purchaser to the return of the Deposit, if Seller shall not have given written notice of objection in accordance with Section 8.1.3; or

8.1.2.3 the Deposit shall be delivered as directed by joint written instructions of Seller and Purchaser.

8.1.3 Upon the filing of a written demand for the Deposit by Seller or Purchaser pursuant to Section 8.1.2.1 or 8.1.2.2 of this Agreement, Escrow Agent shall promptly give notice thereof (including a copy of such demand) to the other party. Any party shall have the right to object to the delivery of the Deposit by giving written notice of such objection to Escrow Agent at any time within Five (5) business days after such party's receipt of notice from Escrow Agent, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice of objection, Escrow Agent shall promptly give a copy of such notice to all other parties to this Agreement.

8.1.4 If Escrow Agent shall have received a notice of objection provided for in Section 8.1.3 within the time therein prescribed, Escrow Agent shall continue to hold the Deposit until (i) Escrow Agent receives written notice from Seller and Purchaser directing the disbursement of the Deposit, in which case Escrow Agent shall then disburse the Deposit in accordance with such direction, or (ii) litigation is commenced between Seller and Purchaser, in which case Escrow Agent shall deposit the Deposit with the clerk of the court in which such litigation is pending, or (iii) Escrow Agent takes such affirmative steps as Escrow Agent may elect, at Escrow Agent's option, in order to terminate Escrow Agent's duties hereunder (but in no event disbursing the Deposit to Seller or Purchaser), including but not limited to depositing the Deposit in court and commencing an action for interpleader, the costs thereof to be borne by whichever of Seller or Purchaser is the losing party.

8.1.5 Escrow Agent may rely and act upon any instrument or other writing reasonably believed by Escrow Agent to be genuine and purporting to be signed and presented by any person or persons purporting to have authority to act on behalf of Seller or Purchaser, and shall not be liable in connection with the performance of any duties imposed upon Escrow Agent by the provisions of this Agreement, except for Escrow Agent's own gross negligence, willful misconduct or default. Escrow Agent shall have no duties or responsibilities except those set forth herein. Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless the same is in writing and signed by Seller and Purchaser and, if Escrow Agent's duties under this Agreement are affected, unless Escrow Agent shall have given prior written consent thereto. Escrow Agent shall be reimbursed by Seller and Purchaser for any actual out-of-pocket expenses (including reasonable legal fees and disbursements of outside counsel, including all of Escrow Agent's fees and expenses with respect to any interpleader action) incurred in connection with this Agreement, and such liability shall be joint and several; provided that, as among Seller and Purchaser, the prevailing party or parties in any dispute over the Deposit shall be entitled to reimbursement of any such expenses paid to Escrow Agent. In the event that Escrow Agent shall be uncertain as to Escrow Agent's duties or rights under this Agreement, or shall receive instructions from Seller and Purchaser that, in Escrow Agent's opinion, are in conflict with any of the provisions hereof, Escrow Agent shall be entitled to continue to hold the Deposit, and may decline to take any other action. In no event shall Escrow Agent incur any liability for levies by

taxing authorities based upon the taxpayer identification number provided to Escrow Agent and used to establish the Escrow Account. Escrow Agent shall have no liability in the event of failure, insolvency or inability of the depository bank to pay the Deposit, or accrued interest, upon demand or withdrawal.

**8.2 Purchaser's Default.** If Purchaser defaults in its obligation to proceed to Closing in accordance with this Agreement and Seller elects not to proceed to Closing, and if such default is not cured or such condition is not satisfied within ten (10) days after Seller has given Purchaser notice of the same, then (i) Escrow Agent shall disburse the Deposit to Seller in accordance with Section 8.1 and Seller shall have the right to retain the same, and (ii) the Deposit shall constitute full and complete liquidated damages, and the exclusive and sole right and remedy of Seller for such default. Upon satisfaction of the foregoing clause (i), this Agreement shall terminate and neither party shall have any further obligations or liabilities to the other party, except for obligations that expressly survive termination of this Agreement. Purchaser acknowledges that Seller's actual damages caused by Purchaser's default in its obligation to proceed to Closing would be difficult to determine precisely and that the Deposit, as liquidated damages, is a fair and reasonable approximation, and waives any other remedy (including without limitation actual, consequential, punitive or other damages).

**8.3 Seller's Default.** If Seller defaults in its obligation to proceed to Closing in accordance with this Agreement and Purchaser elects not to proceed to Closing, and if such default is not cured or such condition is not satisfied within ten (10) days after Purchaser has given Seller notice of the same, then Purchaser shall be entitled, elect as a remedy, to either (i) terminate this Agreement and receive the return of the Deposit or (ii) seek specific performance of this Agreement.

## ARTICLE 9. CASUALTY AND CONDEMNATION

**9.1 Notice to Purchaser.** Seller shall give Purchaser prompt notice of (i) any pending or threatened condemnation affecting the Property of which Seller becomes aware, and (ii) any fire or other casualty occurring prior to Closing that affects the Property. Seller shall bear all risk of loss to the Property prior to Closing.

**9.2 Minor Casualty or Condemnation.** If prior to Closing, condemnation proceedings are commenced or the Property is damaged by fire or other casualty, and (i) such condemnation or casualty will not, in Purchaser's reasonable judgment, materially adversely affect the Purchaser's contemplated development of the Property, and (ii) the damage to the Property as result of such condemnation or casualty does not exceed \$5,000,000.00, then (A) this Agreement shall continue in full force and effect, (B) with respect to condemnation, Purchaser shall be entitled to an assignment at Closing of the condemnation award payable to Seller, and (C) with respect to fire or other casualty, Purchaser shall be entitled to an assignment at Closing of any insurance proceeds payable to Seller (and a credit for any applicable deductible amount).

**9.3 Major Casualty or Condemnation.** If prior to Closing, condemnation proceedings are commenced or the Property is damaged by fire or other casualty, and

such condemnation or casualty is not covered by Section 9.2, Purchaser shall have the right, upon notice in writing to the Seller delivered within ten (10) days after Seller gives Purchaser notice of such condemnation matter as described in Section 9.1, to terminate this Agreement, in which event Escrow Agent shall return the Deposit (if otherwise applicable) to Purchaser, and neither party to this Agreement shall thereafter have any further rights or liabilities under this Agreement other than those that expressly survive termination of this Agreement. If Purchaser does not elect to so terminate this Agreement, clause (A), (B) and (C) of Section 9.2 shall apply.

## ARTICLE 10. MISCELLANEOUS

**10.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

**10.2 Captions, Numberings and Headings.** Captions, numberings and headings of Articles, Sections and Exhibits in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement. References in this Agreement to Articles, Sections and Exhibits shall be deemed to be references to such Articles, Sections and Exhibits in this Agreement unless otherwise expressly specified.

**10.3 Including.** The word "including" and variations thereof, when used in this Agreement, shall mean "including without limitation."

**10.4 Number; Gender.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**10.5 Business Day.** In the event that the date for performance of any obligation under this Agreement falls on other than a business day, then such obligation shall be performed on the next succeeding business day.

**10.6 Severability.** In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect, unless this construction would operate as an undue hardship on Seller or Purchaser or would constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

**10.7 No Oral Modifications or Waivers.** No modification of this Agreement shall be valid or effective unless the same is in writing and signed by Seller and Purchaser. No purported waiver of any of the provisions of this Agreement shall be valid or effective unless the same is in writing and signed by the party against whom it is sought to be enforced.

**10.8 Exhibits.** All Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement, and all references to this Agreement shall be deemed to include all such Exhibits.

**10.9 Integration.** This Agreement and all Exhibits appended to this Agreement and the documents and agreements referenced in this Agreement contain the entire understanding between Seller and Purchaser with respect to the sale of the Property, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between Seller and Purchaser with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between Seller and Purchaser with respect to the sale of the Property other than as are expressly set forth in this Agreement and the Exhibits appended to this Agreement and the documents and agreements referenced in this Agreement.

**10.10 No Construction Against Drafter.** This Agreement has been negotiated and prepared by Seller and Purchaser and their respective attorneys and should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**10.11 Assignment.** Purchaser shall not assign this Agreement without the consent of Seller (such consent shall not be unreasonably withheld). Notwithstanding the foregoing, without Seller's consent but upon at least ten (10) days advance written notice to Seller, Purchaser shall have the right to designate a limited liability company or limited partnership under common ownership with Purchaser as the party to take title to the Property at Closing pursuant to the terms of this Agreement.

**10.12 Notices.** Except as otherwise set forth in this Agreement, notices and other communications required or permitted under this Agreement shall be in writing and delivered by hand against receipt or sent by recognized overnight delivery service. All notices shall be addressed as follows:

If to Seller:

Nelson Ayala & Maria Ayala  
Ayala & Associates  
3501 14<sup>th</sup> Street, NW  
Washington, DC 20010  
Attn:Nelson Ayala & Maria Ayala

with a copy to:

Bryan K Short, Esq.  
Montgomery Fazzone, PLLC  
1775 Pennsylvania Avenue, NW  
Suite 950

Washington, DC 20006  
Tel: 202-888-2107  
bshort@mft-law.com

If to Purchaser:

LDP Acquisitions LLC  
1508 U Street NW  
Washington, DC 20009  
Attn: Jair K. Lynch and Ulysses H. Auger  
Tel: (202) 462-1092  
Email: jkl@jairlynch, uha@jairlynch.com

with a copy to:

Michael S Long PLLC  
1508 U Street NW  
Washington, DC 20009  
Attn: Michael S Long  
Tel: (571) 255-9220  
Email: msl@jairlynch.com

If to Escrow Agent:

Terra Nova Title & Settlement Services  
1211 Connecticut Avenue NW, Suite 401  
Washington, DC 20036  
Attn: Christopher Clarke  
Tel: 202-331-0901  
Email: cclarke@tnovatitle.com

or to such other addresses as may be designated by a proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered or sent by recognized overnight delivery service, or upon electronically verified transmission, if such delivery is by telecopy.

**10.13 Waiver of Jury Trial; Jurisdiction.** Seller and Purchaser each hereby waives any right to jury trial in the event any party files an action relating to this Agreement or to the transactions or obligations contemplated by this Agreement. Any action, suit or proceeding arising out of this Agreement or the transactions contemplated by this Agreement shall be brought exclusively in the federal or local courts having jurisdiction over the District of Columbia and Seller and Purchaser agree that such courts are the most convenient forum for resolution of any such action and further agree to submit to the jurisdiction of such courts and waive any right to object to venue in such courts.

**10.14 Counterparts and Effectiveness.** This Agreement may be executed in any number of counterparts which, when taken together, shall constitute a single binding instrument. Execution and delivery of this Agreement by telecopy, .pdf or other electronic means shall be sufficient for all purposes and shall be binding on any person who so executes.

**10.15 Brokerage.** Seller and Purchaser each represents to the other that it has dealt with no broker, finder or other party in connection with the transaction described in this Agreement Seller and Purchaser shall each indemnify the other against any liability for (i) its respective obligations to Broker to the extent set forth in this Section 10.15 and (ii) any brokerage, agent or finder's fees or commissions and related costs and expenses payable in connection with Closing that are claimed by any party with whom Seller or Purchaser, respectively, has dealt. This Section 10.15 shall survive termination of this Agreement and the Closing.

**10.16 Confidentiality.** The parties shall keep the terms and conditions of this Agreement confidential and shall not disclose same except to their respective attorneys, accountants, lenders and prospective lenders, funders, agents, consultants and advisors involved in the transaction and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities for the Property or Joint Pursuit Activities, all of whom shall be advised of this confidentiality obligation. This Section 10.16 will not apply (i) to any regulatory agency having the authority to examine Purchaser or Seller, (ii) as required by any legal or governmental process or otherwise by law, and (iii) to the extent such information has been or will become publicly available in a manner not otherwise involving the breach of the terms of this Agreement by a party hereto.

**10.17 Recordation.** Seller agrees that Purchaser may cause to be recorded in the land records of the District of Columbia the memorandum relating to contract in substantially the form attached as Exhibit D hereto relating to the sale of the Property to Purchaser under the terms hereunder. In addition, Purchaser does hereby irrevocably appoint Seller its attorney in fact (coupled with an interest) to file the memorandum relating to termination of this Agreement in the form attached hereto as Exhibit E, solely upon both (i) any default by Purchaser remaining cured and the time period of any applicable notice and cure periods lapsing in accordance with the terms of this Agreement and (ii) as a result of such uncured default, Seller terminating this Agreement in accordance with the terms of this Agreement.

**10.18 Time of Essence.** Time is of the essence with respect to the performance of all obligations, and the exercise of all rights, of Seller and Purchaser under this Agreement.

**10.19 Soil Characteristics.** The characteristic of the soil of the Land, as described by the Soil Conservation Service of the U.S. Department of Agriculture in the Soil Survey Book of the District of Columbia (area 9) published in 1975, and as shown on the Soil Maps of the District of Columbia at the back of that publication, is Urban Land. For further information, Purchaser may contact a soil testing laboratory, the

District of Columbia Department of Environmental Services or the Soil Conservation Service of the U.S. Department of Agriculture. The foregoing is set forth pursuant to requirements of the District of Columbia Code and is not intended, and shall not be construed as, limiting the conditions set forth herein with respect to Purchaser's right to make investigations, tests and studies satisfactory to it.

**10.20 UST Disclosure.** In accordance with the requirements of Section 3(g) of the District of Columbia Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (the "Act"), Seller has informed Purchaser, and hereby re-informs Purchaser, that to the knowledge of Seller, except as set forth in any environmental reports or other materials provided by Seller to Purchaser prior to expiration of the Due Diligence Period, no underground storage tanks have existed or been removed at or from the Property during Seller's ownership of the Property. This disclosure notice was provided to Purchaser prior to entering into this Agreement.

**10.21 Like-Kind Exchange.** Notwithstanding any provision of Section 10.11 to the contrary, Seller and Purchaser shall each have the right to assign any of its rights and delegate any of its obligations under this Agreement in connection with a like-kind exchange of property intended to qualify as tax-free under Section 1031 of the Code, provided that such assignment and like-kind exchange shall not delay the Closing or impose any liabilities or obligations on the other party, and the party requesting such assignment shall indemnify the other party from any and all additional costs, liabilities or expenses as a result of such like-kind exchange, and provided further that such party shall remain liable for its obligations under this Agreement. Upon request, Seller and Purchaser shall each reasonably cooperate with the other to enable the other to consummate such like-kind exchange (provided that neither Seller nor Purchaser shall have any obligation to take title to any real property other than the Property).

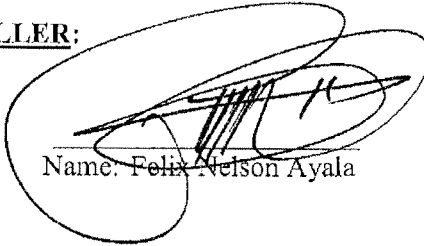
[signatures on following page]



IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the Contract Date.

**SELLER:**

By:



Name: Felix Nelson Ayala

By:



Name: Maria Ayala

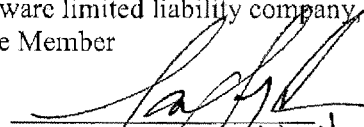
**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By:

By: LDP Holdings, LLC  
a Delaware limited liability company  
its Sole Member

By:



Name: DAVE LYNCH  
Title: AUTHORIZED REPRESENTATIVE

**Joinder of Escrow Agent**

Escrow Agent hereby joins in this Agreement for purposes of evidencing its agreement to hold and disburse the Deposit in accordance with the terms of this Agreement.

TERRA NOVA TITLE & SETTLEMENT  
SERVICES

By: \_\_\_\_\_  
Name:  
Title:

Schedule 3.8

Leases

Retail Lease Agreement between Seller and Smucker Farms.

Schedule 3.9

Assignable Contracts

Schedule 5.1.1.

Due Diligence Materials

Schedule 5.2

Permitted Exceptions

Retail Lease with Tenant Smucker Farms.

Exhibit A

Property Legal Description

2118 14th Street NW, Washington, DC 20009

Lot 0010, Square 0203, in a subdivision made by William W. Rapley as per plat recorded  
in Liber W.F. at folio 152 in the Office of the Surveyor for the District of Columbia

Exhibit B

Form of Deed

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED (“Deed”)** is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by FELIX NELSON AYALA and MARIA E AYALA (“Grantor”) to LDP ACQUISITIONS LLC, a Delaware limited liability company, having its principal place of business at 1508 U Street NW, Washington, DC (“Grantee”).

**WITNESSETH:**

THAT said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee, in fee simple, all of that certain land situate, lying and being in the District of Columbia, and being more particularly described on Schedule 1 attached hereto, together with all improvements situated thereon and all rights, titles and interests appurtenant thereto (the “Property”).

TO HAVE AND TO HOLD said Property unto and for the use and benefit forever of Grantee in fee simple, subject only to matters previously recorded against the Property.

AND the Grantor does hereby covenant to warrant specially the Property hereby conveyed, and will defend the same against the lawful claims and demands of all persons claiming by, through and under Grantor.

*[signatures appear on following page]*



IN WITNESS WHEREOF, Grantor has duly executed this Special Warranty Deed as of the day, month and year first above written.

**GRANTOR:**

By: \_\_\_\_\_  
Name:  
Title:

DISTRICT OF COLUMBIA:

I, \_\_\_\_\_, a Notary Public and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, acknowledged said Special Warranty Deed to be the act and deed of Grantor and he delivered the same as such.

WITNESS my hand and official seal this \_\_\_\_\_, 2017.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

DISTRICT OF COLUMBIA:

I, \_\_\_\_\_, a Notary Public and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, acknowledged said Special Warranty Deed to be the act and deed of Grantor and he delivered the same as such.

WITNESS my hand and official seal this \_\_\_\_\_, 2017.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Return after recording to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit C

Form of General Assignment

**ASSIGNMENT**

**THIS ASSIGNMENT** (“Assignment”) is made as of \_\_\_\_\_, 2017 by FELIX NELSON AYALA and MARIA E AYALA (“Assignor”), in favor of LDP ACQUISITIONS, a Delaware limited liability company (“Assignee”).

**RECITALS:**

Pursuant to an Agreement of Purchase and Sale dated as of \_\_\_\_\_, 2017 (the “Agreement”), between Assignor, as seller, and Assignee, as purchaser, Assignor has agreed to sell to Assignee certain real property and improvements commonly known as 2118 14<sup>th</sup> Street NW, Washington, District of Columbia (the “Property”). Pursuant to the Agreement, Assignor also desires to assign to Assignee, and Assignee desires to assume all of Assignor’s right, title and interest, if any, in, to and under the Assigned Property described below.

**NOW, THEREFORE**, in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.
2. **Assignment.** Assignor hereby sells, assigns, conveys, transfers, and grants to Assignee, all of its right, title and interest in the following (collectively, “Assigned Property”):
  - a. the Leases; and
  - c. the Assignable Contracts; and
  - d. the Intangible Property,

As used herein, “Intangible Property” means, collectively, (i) all assignable guarantees and warranties that relate to the Property and/or the improvements located thereon (the “Improvements”), (ii) all assignable permits, certificates of occupancy, and other public approvals that relate to the Property and/or the Improvements, (iii) all plans and specifications for the Improvements and (iv) keys and lock and safe combinations relating to the Property.

3. **Assumption.** Assignee hereby assumes all obligations of Assignor under the Assigned Property that accrue from and after the date of this Assignment. From and after the date of this Assignment, Assignee shall pay and perform all such obligations. Assignor is making no representations or warranties with respect to the Assigned Property except to the extent expressly set forth in the Agreement.
4. **Reservation of Benefits.** Notwithstanding anything to the contrary in this Assignment or the other Transaction Documents, Assignor reserves and retains the benefit of all indemnities and defense obligations provided under the Assigned Property to the extent the same relate to any matter for which Assignor may continue to have liability from and after the date hereof, provided that such benefits reserved and retained

by Assignor shall exist jointly with Assignee's benefits under the Assigned Property, and such benefits may be enforceable by each of Assignor and Assignee to the extent of their respective liability or damages for any matters relating thereto. Assignee shall cooperate with the reasonable requests of Assignor in enforcing its benefits under the Assigned Property to the extent such benefits are reserved by Assignor pursuant to this Section 4, provided that Assignee shall not be obligated to incur any cost in connection therewith.

5. **Further Assurances.** Promptly upon request of the other party, Assignor and Assignee shall each execute and deliver to the other such further assurances and take such further actions as may be reasonably required or appropriate to perfect the transfer of the Assigned Property to Assignee and otherwise carry out the intent and purpose of this Assignment.

6. **Binding Effect and Assignment.** This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

*[signatures appear on following page]*

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment under seal as of the date first above written.

**ASSIGNOR:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

EXBHIT D

AFTER RECORDATION,  
PLEASE RETURN TO:

Terra Nova Title & Settlement Services  
1211 Connecticut Avenue NW, Suite 401  
Washington, DC 20036  
Attn: Christopher Clarke  
Tel: 202-331-0901

MEMORANDUM RELATING TO  
CONTRACT

THIS MEMORANDUM RELATING TO CONTRACT (this "**Memorandum**") is made as of the \_\_\_th day of March \_\_, 2017, by and between LDP ACQUISITIONS, LLC, a Delaware limited liability company ("**Purchaser**"), whose address is 1508 U Street, NW, Washington, DC 20009, and FELIX NELSON AYALA and MARIA E AYALA ("**Seller**"), whose mailing address is 3501 14th St NW, Washington, DC 20010.

A Seller and Purchaser have entered into a certain Purchase and Sale Agreement (the "**Purchase Agreement**"), pursuant to which Seller has agreed to sell, and Purchaser has agreed to purchase, a certain parcel of real property located in the District of Columbia, together with any and all improvements located thereon and all easements, tenements, hereditaments, and appurtenances belonging thereto (collectively, the "**Real Property**"), the consummation of any such purchase and sale being subject to, all of the terms, covenants and closing conditions set forth in the Purchase Agreement. The Real Property is more particularly described in Exhibit A to this Memorandum,

B. Seller and Purchaser desire to enter into this Memorandum to give record notice of the existence of the Purchase Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller has agreed to sell, and Purchaser has agreed to purchase, the Real Property, the consummation of any such purchase and sale being subject to, all of the terms, covenants and closing conditions set forth in the Purchase Agreement.

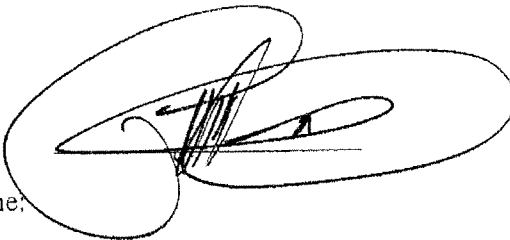
The purpose of this Memorandum is to give record notice of the Purchase Agreement and of the rights created thereby, all of which are hereby confirmed.

Submitted for Electronic Recording by:  
Terra Nova Title & Settlement Services  
1211 Connecticut Avenue NW, Suite 401  
Washington, DC 20036  
Attn: Christopher Clarke  
Tel: 202-331-0901

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum as of the date first above written.

SELLER:

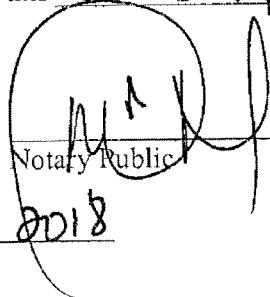
By:   
Name:

By: Maria E ayala  
Name:

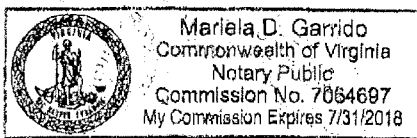
DISTRICT OF COLUMBIA:

I, Mariela Garrido a Notary Public and for the jurisdiction aforesaid, do hereby certify that Felix N. Ayala, the \_\_\_\_\_ of \_\_\_\_\_, acknowledged said Memorandum Relating to Contract to be the act and deed of Grantor and he delivered the same as such.

WITNESS my hand and official seal this 5th of April, 2017.

  
[Notarial Seal]  
Notary Public

My Commission Expires: July 31, 2018



By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By: LDP Holdings, LLC  
a Delaware limited liability company  
its Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten Signature]*  
Name: JAIR LYNCH  
Title: AUTHORIZED REPRESENTATIVE

DISTRICT OF COLUMBIA:

I, TANESHA Bailey, a Notary Public and for the jurisdiction aforesaid, do hereby certify that JAIR LYNCH, the AUTHORIZED REPRESENTATIVE of LDP ACQUISITIONS, LLC acknowledged said Memorandum Relating to Contract to be the act and deed of Grantor and he delivered the same as such.

WITNESS my hand and official seal this 6th April 2017, 2017.

[Notarial Seal]

TANESHA BAILEY Notary Public  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires May 14, 2020

My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

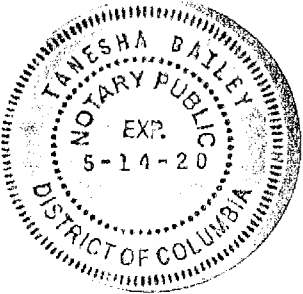


EXHIBIT A

Legal Description

2118 14th Street NW, Washington, DC 20009

Lot 0010, Square 0203, in a subdivision made by William W. Rapley as per plat recorded in Liber W.F. at folio 152 in the Office of the Surveyor for the District of Columbia Exhibit E



AFTER RECORDATION,  
PLEASE RETURN TO:

Montgomery Fazzone PLLC  
Bryan K Short, Esq.  
1775 Pennsylvania Avenue, NW  
Suite 950  
Washington, DC 20006

MEMORANDUM  
RELATING TO  
CONTRACT

THIS MEMORANDUM RELATING TO CONTRACT (this "**Memorandum**") is made as of the \_\_\_th day of \_\_\_\_\_, 2017, by and between LDP ACQUISITIONS, LLC, a Delaware limited liability company ("**Purchaser**"), whose address is 1508 U Street, NW, Washington, DC 20009, and FELIX NELSON AYALA and MARIA E AYALA ("**Seller**"), whose mailing address is 3501 14th St NW, Washington, DC 20010.

A. Seller and Purchaser have entered into a certain Purchase and Sale Agreement (the "**Purchase Agreement**"), pursuant to which Seller has agreed to sell, and Purchaser has agreed to purchase, a certain parcel of real property located in the District of Columbia, together with any and all improvements located thereon and all easements, tenements, hereditaments, and appurtenances belonging thereto (collectively, the "**Real Property**"), the consummation of any such purchase and sale being subject to, all of the terms, covenants and closing conditions set forth in the Purchase Agreement. The Real Property is more particularly described in Exhibit A to this Memorandum,

B. Purchaser has defaulted under its obligations in the Purchase Agreement, failed to cure same, and the Purchase Agreement has been terminated in accordance with the terms of the Purchase Agreement. All right of Purchaser to acquire the Real Property under the Purchase Agreement has been forever terminated.

C. Purchaser has appointed Seller as its attorney in fact, coupled with an interest to file this memorandum in accordance with the terms hereof and the applicable provisions of the Purchase Agreement.

WHEREUPON, all parties are put on notice that the Purchaser has no further right, title or interest to the Real Property.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum as of the date first above written.

SELLER:

By:

Name:

By: \_\_\_\_\_

Name:

DISTRICT OF COLUMBIA:

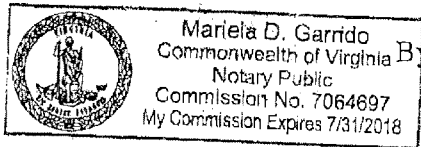
I, Mariela Garrido, a Notary Public and for the jurisdiction aforesaid, do hereby certify that Felix N. Ayala, the \_\_\_\_\_ of \_\_\_\_\_, acknowledged said Memorandum Relating to Contract to be the act and deed of Grantor and he delivered the same as such.

WITNESS my hand and official seal this 5th April, 2017.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: July 31, 2018



By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Nelson Ayala, Attorney In fact

DISTRICT OF COLUMBIA:

I, \_\_\_\_\_, a Notary Public and for the jurisdiction aforesaid, do hereby certify that Nelson Ayala, attorney in fact for LDP Acquisitions, L.L.C., acknowledged said Memorandum Relating to Contract.

WITNESS my hand and official seal this \_\_\_\_\_, 2017.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:



EXHIBIT A

Legal Description

2118 14<sup>th</sup> Street NW, Washington, DC 20009

Lot 0010, Square 0203, in a subdivision made by William W. Rapley as per plat recorded in Liber W.F. at folio 152 in the Office of the Surveyor for the District of Columbia

## FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT (“**Amendment**”) is made as of May \_\_, 2017 (“**Effective Date**”) TO THE PURCHASE AND SALE AGREEMENT (“**Agreement**”) dated April 6, 2017 (“**Contract Date**”), between (i) LDP Acquisitions LLC, a Delaware limited liability company (“**Purchaser**”), and (ii) Felix Nelson Ayala and Maria E. Ayala (“**Seller**”).

### RECITALS:

**WHEREAS**, Seller and Purchaser are parties to the Agreement relating to the sale and transfer of the Property (as defined in the Agreement); and

**WHEREAS**, each of the Seller and the Purchaser desire to amend the terms of the Agreement as provided herein and on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the foregoing premises, the mutual covenants set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, intending to be legally bound:

### AMENDMENT

1. Due Diligence Period. The parties agree that Section 1.1.13 of the Agreement is amended and restated in its entirety as follows:

**1.1.13 Due Diligence Period:** the period commencing on the Contract Date and expiring at 5:00 p.m. Eastern Time on the date that is sixty (60) calendar days thereafter (“**Initial Due Diligence Period**”). As of and after the Effective Date, the Due Diligence Period is extended ninety (90) calendar days from and after expiration of the Initial Due Diligence Period.

2. Definitions. Except as otherwise set forth herein, all defined terms shall have the same meaning as set forth in the Agreement.

3. No other Modifications. Except as expressly stated herein, the Agreement, together with any and all exhibits thereto, shall remain unmodified and in full force and effect.

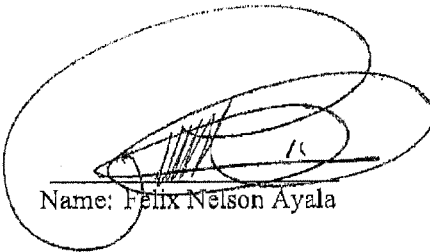
4. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute a separate document but all of which together shall constitute one and the same agreement. Signature pages may be detached and reattached to physically form one document. A facsimile signature shall be binding as an original signature.


[Signatures on Following Page.]

**ARTICLE 1.**

IN WITNESS WHEREOF, Seller and Purchaser have caused this Amendment to be executed as of the Effective Date.

**SELLER:**

By:   
Name: Felix Nelson Ayala

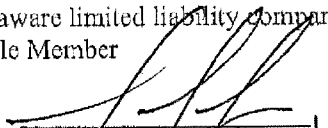
By:   
Name: Maria E. Ayala

**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By: LDP Investment Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By: LDP Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By:   
Name: JAVIER NOCA  
Title: AUTHORIZED REPRESENTATIVE

## SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT (“**Amendment**”) is made as of August 28, 2017 (“**Effective Date**”) TO THE PURCHASE AND SALE AGREEMENT (“**Agreement**”) dated April 6, 2017 (“**Contract Date**”), as amended by the First Amendment dated June 1, 2017 (“**First Amendment**”), between (i) LDP Acquisitions LLC, a Delaware limited liability company (“**Purchaser**”), and (ii) Felix Nelson Ayala and Maria E. Ayala (“**Seller**”).

### RECITALS:

**WHEREAS**, Seller and Purchaser are parties to the Agreement relating to the sale and transfer of the Property (as defined in the Agreement); and

**WHEREAS**, each of the Seller and the Purchaser desire to amend the terms of the Agreement as provided herein and on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the foregoing premises, the mutual covenants set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, intending to be legally bound:

### AMENDMENT

1. Due Diligence Period. The parties hereby agree that Section 1.1.13 of the Agreement, as amend by the First Amendment, is amended to add the following sentence at the end of such Section 1.1.13:

The Due Diligence Period is hereby extended by an additional seven (7) calendar days from and after experiation of the Due Diligence Period set forth above.

2. Definitions. Except as otherwise set forth herein, all defined terms shall have the same meaning as set forth in the Agreement.

3. No other Modifications. Except as expressly stated herein, the Agreement, together with any and all exhibits thereto, shall remain unmodified and in full force and effect.

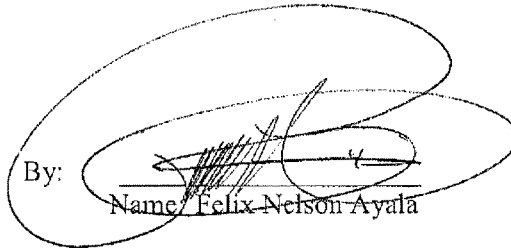
4. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute a separate document but all of which together shall constitute one and the same agreement. Signature pages may be detached and reattached to physically form one document. A facsimile signature shall be binding as an original signature.

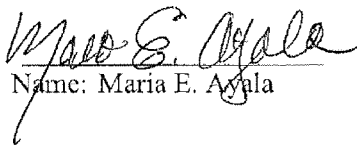
[Signatures on Following Page.]



IN WITNESS WHEREOF, Seller and Purchaser have caused this Amendment to be executed as of the Effective Date.

**SELLER:**

By:   
Name: Felix Nelson Ayala

By:   
Name: Maria E. Ayala

**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By: LDP Investment Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By: LDP Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Amendment to be executed as of the Effective Date.

**SELLER:**

By: \_\_\_\_\_  
Name: Felix Nelson Ayala

By: \_\_\_\_\_  
Name: Maria E. Ayala

**PURCHASER:**

**LDP ACQUISITIONS LLC,**  
a Delaware limited liability company

By: LDP Investment Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By: LDP Holdings, LLC  
a Delaware limited liability company,  
its Sole Member

By: \_\_\_\_\_  
Name: Jai Lynch  
Title: Authorized Representative



Mazin I. Elias, Esq.  
 Direct Dial: (240) 507-1708  
 Email: [MElias@offitkurman.com](mailto:MElias@offitkurman.com)

September 22, 2017

**VIA ELECTRONIC MAIL**

Mr. Bryan K Short  
 Montgomery Fazzone PLLC  
 1775 Pennsylvania Avenue, NW Suite 950  
 Washington, DC 20006  
[bshort@mtf-law.com](mailto:bshort@mtf-law.com)

RE: **REJECTION OF TERMINATION LETTER; Agreement of Purchase and Sale dated April 6, 2017 ("Agreement") between Felix Nelson Ayala and Maria E. Ayala ("Seller") and LDP Acquisitions LLC ("Purchaser") for 2118 14<sup>th</sup> St. NW, Washington, DC 20009**

Dear Mr. Short:

The undersigned and this law firm represent the Purchaser with respect to above referenced Agreement. This serves as my client's response to your letter dated September 19, 2017 and rejection of Seller's purported attempt to terminate the Agreement ("Termination Letter").

The Agreement has at all times remained in full force and effect. Seller's attempt to cause a premature termination of the Agreement is without legal effect. No event has occurred during the pendency of the Agreement to trigger Seller's right of termination under Section 5.8 (c) of the Agreement. In relevant part, that provision states:

...[I]n the event that it shall become *impossible* or *impracticable* for Purchaser to acquire the Martha's Table Properties, then Seller shall have the right to terminate this Agreement upon five (5) days written notice sent to Purchaser ...

The Termination Letter wrongfully asserts that the Martha's Table ("MT") Property has been "purchased." However, no such incident has occurred. Instead, the MT Property has come under contract for sale with a closing date being set far in the future.

The occurrence of such an event does not make it impossible or impracticable for Purchaser to acquire the MT Property. Webster's dictionary defines "impossible" to mean "incapable of occurring." The term "impracticable" is further defined as "incapable of being performed." Various instances could arise during the executory period that make it possible for Purchaser to acquire MT Property. For instance, the non-affiliated third-party purchaser could fail to obtain financing or funding to purchase the MT Property by closing and thus terminate its rights under its purchase agreement. Alternatively, other conditions could occur to allow the sale not to go through thus leaving the potential for Purchaser to purchase the property.



Even if Section 5.8(c)'s termination right was triggered by the "sale" of the MT Property, Seller failed to effectuate proper notice to terminate the Agreement. Section 5.8 provides that the Seller's termination right shall arise "upon five (5) days written notice sent to Purchaser." The Termination Letter purports to immediately terminate the Agreement in direct contravention of Section 5.8(c). Thus, the Termination Letter is not effective.

Demand is hereby made for Seller to provide written acknowledgement of its revocation of the Termination Letter and confirmation that the Agreement is in good standing and remains in full force and effect by no later than 5:00 p.m. on September 25, 2017. Should Seller fail to adhere to such demands, Purchaser reserves its right to exercise any and all remedies which may include commencing a civil action for declaratory judgment and injunctive relief as well as recording a *lis pendens* with in the Recorder of Deeds office to note its claim.

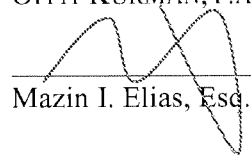
Nothing contained herein shall be deemed to as a waiver or release by Purchaser of its rights or claims. Purchaser further reserves any and all of its rights and remedies under the Agreement or the applicable law.

All further communications regarding the foregoing must be directed to the undersigned.

Sincerely,

OFFIT KURMAN, P.A.

By:

  
Mazin I. Elias, Esq.

Bryan K Short  
Direct Dial: 202-888-2107  
Email: [bshort@mft-law.com](mailto:bshort@mft-law.com)

September 19, 2017

LDP Acquisitions LLC  
Jair Lynch and Ulysses Auger  
1508 U Street, NW  
Washington, DC 20009  
[jl@jairlynch.com](mailto:jl@jairlynch.com), [uha@jairlynch.com](mailto:uha@jairlynch.com)

and

Michael S Long PLLC  
Michael Long  
1508 U Street, NW  
Washington, DC 20009  
[mssl@jairlynch.com](mailto:mssl@jairlynch.com)

and

Terra Nova Title and Settlement Services  
Attn: Christopher Clarke  
1211 Connecticut Avenue, NW  
Suite 401  
Washington, DC 20036

**RE: Termination of Agreement of Purchase and Sale  
Agreement of Purchase and Sale, dated April 6, 2017 (“Agreement”)**

Dear Sirs:

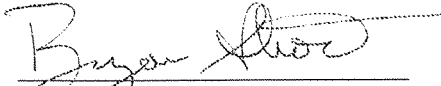
As you are aware, the Martha's Table Property (as defined in the Agreement) has been purchased by a non-affiliated third-party. Therefore, the purchase of the Martha's Table Property as contemplated in the Agreement has become impossible or impracticable. Given this event and pursuant to Section 5.8(c) of the Agreement, Seller does hereby terminate the Agreement.

This notice shall serve as Seller's authorization to the Escrow Agent to release the full Deposit held under the Agreement to the Purchaser.

Montgomery Fazzone, PLLC  
September 19, 2017  
Termination of Agreement of Purchase and Sale  
Page 2 of 2

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Sincerely,

  
Bryan K Short

---

Bryan K Short  
Direct Dial: 202-888-2107  
Email: bshort@mft-law.com

September 25, 2017

Mazin I. Elias  
Offit Kurman  
4800 Montgomery Lane  
9<sup>th</sup> Floor  
Bethesda, MD 20814

**RE: Your Letter Dated September 22, 2017**

Dear Mr. Elias:

No basis exists under the Agreement for the Purchaser to “reject” Seller’s notice that it is exercising its rights pursuant to 5.8(c). In addition, your contention that Webster’s Dictionary is a legal authority on what constitutes what is “impractical” is not persuasive. The closing under the purchase agreement would indeed make settlement “impossible” as you note, therefore, something short of “impossible” is clearly meant by “impracticable.”

The property has been purchased by a third party. Seller has provided the required notice pursuant to Section 5.8(c). Purchaser’s sole and exclusive remedy to prevent the termination of the Agreement was to waive the condition precedent under Section 6.1.3 within the five-day period following Seller’s notice. Purchaser has failed to so waive the closing condition contained in Section 6.1.3 during the five-day period (which ended Sunday September 24, 2017) and therefore as a result of which, the Agreement has been terminated.

We are unaware under what right you believe you are entitled to place a *lis pendens* on the property as neither is there pending litigation, nor is there a valid dispute with respect to mortgage, lien or property ownership. In addition, if you were to file any sort of litigation against Mr. Ayala, it would not be under any claim that property ownership is at issue. The agreement, by its very nature was executory in nature and conditioned upon a great many conditions, none of which have occurred to this point through Purchaser’s own admitted failure to secure the purchase of the Martha’s Table property and Purchaser’s admitted failures to diligently pursue the satisfaction of any of the conditions precedent to closing.

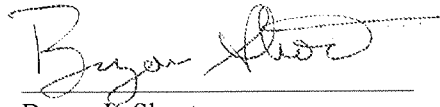
Any attempt to cloud Mr. Ayala’s title to the property will be met with swift and direct action, including potential actions for slander of title.

**EXHIBIT D**

Montgomery Fazzone, PLLC  
September 25, 2017  
Response to 9-22 Letter from Offit Kurman  
Page 2 of 2

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Sincerely,

A handwritten signature in cursive script, appearing to read "Bryan Short", written over a horizontal line.

Bryan K Short



**EXHIBIT “B”**

**(Follows this Page)**



2018007656-2

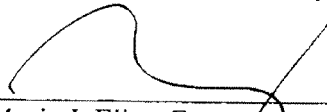
**DISTRICT OF COLUMBIA  
RECORDER OF DEEDS**

**NOTICE OF PENDENCY OF ACTION (LIS PENDENS)**

1. Court Filed: District of Columbia Superior Court
2. Title of Proceeding: LDP Acquisitions LLC v. Felix Nelson Ayala, et al.
3. Case No.: 2017 CA 006699 B
4. Date of Filing: October 2, 2017
5. Object of Filing: Claim for declaratory and injunctive relief confirming the Agreement of Purchase and Sale ("Purchase Agreement") dated April 6, 2017 between LDP Acquisitions LLC ("LDP") and Fenix Ayala and Maria Ayala ("Ayalas") to be in full force and effect and affirming the right of LDP under the Purchase Agreement to purchase the property located at 2118 14<sup>th</sup> St., NW, Washington, DC 20009 ("Property"); Motion for leave to amend filed by LDP requesting permission to file an amended complaint which includes a claim for declaratory and injunctive relief requesting the court declare any other contract entered into between Ayalas and Madison Investments, LLC ("Madison") or any third party ("Third Party Agreement") for the sale of the Property be deemed unenforceable and any alleged right to purchase the Property arising from the terms of any such Third Party Agreement to be void and without legal effect.
6. Relief Sought: Declaration that the Purchase Agreement for the Property made between LDP and the Ayalas remains in full force and that any Third Party Agreement made between Ayala and Madison or any third party for the purchase of the Property to be void and unenforceable; enjoin the Ayalas, Madison and any of their agents or other third parties from transferring or conveying any interest in the Property and or taking any action to affect, alter or change the character, status or nature of the Property during the effective period in which the Purchase Agreement and/or LDP's right to purchase Property remains in effect
7. Persons Affected: Felix Nelson Ayala, Maria E. Ayala, Madison Investments LLC
8. Property Description: 2118 14<sup>th</sup> St., NW, Washington, DC 20009

Lot 0010, Square 0203, in a subdivision made by William W. Rapley as  
per plat recorded in Liber W.F. at folio 152 in the Office of the Surveyor  
for the District of Columbia.

Executed on this the 22<sup>nd</sup> day of January, 2018 by:

  
\_\_\_\_\_  
Mazin I. Elias, Esq.  
OFFIT KURMAN, P.A.  
4800 Montgomery Lane, 9<sup>th</sup> Floor  
Bethesda, MD 20814  
(240) 507-1708 / (240) 507-1735 (fax)  
[MElias@offitkurman.com](mailto:MElias@offitkurman.com)  
*Counsel for LDP Acquisitions LLC*

Subscribed and sworn to before me this 22<sup>nd</sup> day of January, 2018.

Notary Public:   
\_\_\_\_\_

My Commission expires: 4/3/2019

After recordation please return to:

Mazin I. Elias, Esq.  
OFFIT KURMAN, P.A.  
4800 Montgomery Lane, 9<sup>th</sup> Floor  
Bethesda, MD 20814

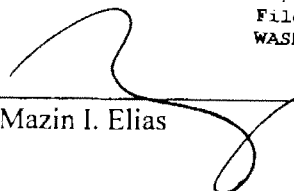
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing LIS PENDENS was mailed, first-class, postage prepaid, this 22<sup>nd</sup> day of January, 2018, to the following:

Brian Short, Esq.  
Montgomery Fazzone, PLLC  
1775 Pennsylvania Avenue, NW, Suite 950  
Washington, D.C. 20006  
*Counsel for Felix Nelson Ayala and Maria E. Ayala*

RECORDING FEES           \$25.00  
SURCHARGE               \$6.50

Doc #: 2018007656 Fees: \$31.50  
01/23/2018 10:52 AM Pages: 2  
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\_\_\_\_\_  
Mazin I. Elias