

FIRST AMENDMENT
to
AGREEMENT TO PURCHASE AND SELL REAL ESTATE

THIS FIRST AMENDMENT TO AGREEMENT TO PURCHASE AND SELL REAL ESTATE ("Amendment") is made and entered into as of the 7th day of August, 2007 by and between the Borough of Downingtown, of Chester County, Pennsylvania, a municipality organized and existing under the laws of the Commonwealth of Pennsylvania ("Seller"); and J. Loew & Associates, Inc., a Pennsylvania corporation, and Progressive Housing Ventures, LLC, a limited liability company (collectively the "Buyer").

BACKGROUND

- A. Seller and Buyer have entered into or are simultaneously entering into a certain Agreement to Purchase and Sell Real Estate dated August 17th, 2007 (the "Agreement of Sale" or "Agreement"), for the sale and purchase of certain real property owned by Seller located in the Borough of Downingtown, Chester County, Pennsylvania, being a part of "Kardon Park," containing approximately 26.5 acres of land, more or less, and known as Chester County UPI Nos. 11-4-23-E; 11-4-13-E; 11-4-14-E; and 11-4-14.2-E (the "Property").
- B. The parties desire to amend, modify, and supplement the Agreement in the manner and on the terms hereinafter set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein, and intending to be legally bound hereby, the parties agree as follows:

1. Agreement of Sale; Incorporation by Reference; Definitions.
 - (a) The Agreement of Sale is incorporated herein by this reference. This Amendment amends, modifies, and supplements the Agreement of Sale and is hereby made a part thereof. If there is any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the Agreement of Sale, this Amendment shall be controlling; otherwise, the Agreement of Sale shall remain in full force and effect.
 - (b) Any capitalized terms used in this Amendment that are defined in the Agreement of Sale shall, unless otherwise provided for in this Amendment, have the meanings ascribed to such terms therein.
 - (c) Except as expressly provided in this Amendment, all terms, conditions precedent and concurrent, conditions to performance, contingencies, representations, warranties, covenants and agreements of the parties set forth

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in the Agreement of Sale shall apply to the Additional Property (as hereinafter defined).

2. Additional Property and Option Property.

(a) Additional Property. In addition to the Property subject to the Agreement of Sale, subject to all the terms and conditions set forth in the Agreement and this Amendment, Seller agrees to sell, grant, and convey to Buyer, and Buyer agrees to purchase from Seller all that certain additional parcel, lot, or tract of land, also being a part of "Kardon Park," containing 14.3 acres of land, more or less, situated in East Caln Township, Chester County, Pennsylvania, and being known and designated as Chester County UPI No. 40-1-23.1E, together with all improvements and all appurtenant easements, rights, benefits, privileges, hereditaments, fixtures and personal property attached to, benefiting or otherwise pertaining to said land, all right, title (collectively, the "Additional Property"). Except as otherwise provided in this Amendment, reference in the Agreement of Sale to the "Property" shall be deemed to refer as well to the Additional Property.

(b) Option Property. Seller is also the owner of a parcel of land containing approximately seven (7) acres more or less, in East Caln Township, Chester County, Pennsylvania, known as Chester County UPI No. 40-1-23E ("Option Property"). Seller is uncertain whether or not Seller desires to sell the Option Property. Buyer preliminarily estimates that at least thirty five (35) residential units and as many as seventy (70) residential units may be developed on the Option Property. Buyer agrees, subject to all the other terms and conditions of the Agreement and this Amendment, to include the Option Property in Buyer's Proposed Plan (hereinafter provided) and applications for the Additional Property Approvals (hereinafter defined) as though the Option Property were part of the Additional Property (provided that Buyer may designate the Option Property as a different phase of development for all plan and approval purposes). Buyer will seek to obtain approvals for the Option Property to permit that number of residential units that is feasible, based on applicable zoning and land use ordinances, and applicable physical and other development constraints. Seller shall have the right (the "Put Right") to require Buyer to purchase the Option Property from Seller at (or subsequent) to the closing on the purchase of the Additional Property, upon giving Buyer at least one hundred eighty (180) days prior written notice ("Put Notice"), provided that (i) all conditions precedent and concurrent to Buyer's obligations to purchase the Property and the Additional Property (as if the Option Property were a part thereof) have either been satisfied, or waived by Buyer, (ii) Buyer shall have obtained the Additional Property Approvals with respect to the Additional Property and the Option Property, with a minimum of thirty-five (35) residential units on the Option Property, (iii) Buyer shall in no event be obligated to purchase the Option Property unless Buyer has already purchased or is simultaneously purchasing the Additional Property, and (iv) Buyer shall not be obligated to purchase the Option Property from Seller if Seller does not give the Put Notice within two (2) years after Closing on the purchase of the Additional Property ("Put Period"). If Seller timely exercises the Put Right, all provisions of the Agreement and this First Amendment that relate to and govern the sale of the Additional Property (other than the purchase price and payment terms, which shall be as set forth in Section 2(c) below) shall apply to the Option Property as if the Option Property were for all purposes thereof and hereof part of the Additional Property, and the parties shall have the same respective rights and obligations, and shall have the benefits of all the same representations, warranties, covenants and conditions,

with respect to the Option Property has they have (or had, as applicable) with respect to the Property and the Additional Property.

(c) Option Property Purchase Price. The purchase price for the Option Property ("Option Property Purchase Price") shall, subject to adjustment as provided below, be the sum of (i) Five Hundred Twenty Five Thousand Dollars (\$525,000.00) ("Option Property Base Price"), plus (ii) the Home Sale Component as computed with respect to the units obtained within the Option Property. The Option Property Purchase Price shall not be less than One Million Fifty Thousand Dollars (\$1,050,000.00) if the Option Property is approved for seventy (70) or more units ("Minimum Option Property Price"). If the Option Property is approved for fewer than seventy (70) units, then the Minimum Option Property Price shall be reduced by Fifteen Thousand Dollars (\$15,000.00) for each residential unit less than seventy (70) that may be developed on the Option Property pursuant to the final Additional Property Approvals, but not below Five Hundred Twenty Five Thousand Dollars (\$525,000.00). . The Option Property Base Price shall be payable at Closing on the purchase of the Option Property. The balance of the Option Property Purchase Price shall be payable in the manner provided in Section 3(b) of this Amendment and Section 2 of the Agreement of Sale. If at the time of sale of the last unit in the Option Property the Minimum Option Property Price has not been paid, then the amount such shortfall shall be paid by Buyer to Seller at the time of sale of the last residential unit in the Option Property.

(d) Seller's Sale of Option Property. Seller will not sell the Option Property or market, offer to sell or solicit offers to purchase the Option Property from any third party during the period of time beginning on the date of this Agreement and continuing for a period of eighteen (18) months after expiration of the Put Period ("Offer Period") without first offering to sell the Option Property to the Buyer for the Option Property Purchase Price and on the terms and conditions set forth in this First Amendment, which offer shall be in writing and may be accepted by Buyer within sixty (60) days after Buyer's receipt of such offer. If Seller receives an offer to purchase the Option Property within eighteen (18) months after the end of the Offer Period, then the Seller shall first give the Buyer a right of first refusal by giving written notice to Buyer and provide the Buyer the opportunity to purchase the Option Property on the terms and conditions set forth in such third party offer for sixty (60) days after such notice is given to Buyer. Buyer may exercise such right by giving written notice to Seller exercising such right of purchase within such sixty (60) day period, and if Buyer exercises such right, then closing shall take place within ninety (90) days thereafter. If Buyer does not purchase the Option Property pursuant to this Agreement, then upon sale of the Option Property the Seller shall pay to Buyer the amount of all costs incurred by Buyer in obtaining the Additional Property Approvals with respect to the Option Property. Buyer shall have no further rights of first refusal or similar rights under this paragraph 2(d) arising out of Seller's offer to sell or Seller's receipt of an offer to purchase the Option Property after the expiration of five (5) years after Closing on the purchase of the Additional Property.

3. Additional Purchase Price. The purchase price of the Additional Property (the "Additional Purchase Price") shall be *the greater of* (i) Nine Hundred Thousand Dollars (\$900,000.00) (the "Minimum Additional Purchase Price"), or (ii) the sum of (A) Six Hundred Thousand Dollars (\$600,000.00), plus (B) an amount equal to two and one-half percent (2.5%) of

the gross purchase price received by Buyer from settlements of residential units in the proposed development of the Additional Property to third-party home buyers, as shown on lines 401 through 405 of the HUD-1 settlement statements executed by Buyer and its home buyers at the time of settlement on such sales (the "Additional Property Home Sale Component"). Unless otherwise provided for in this Amendment, any reference in the Agreement of Sale or this Amendment to the "Home Sale Component" shall be deemed to refer to and include the Additional Property Home Sale Component. The Additional Purchase Price shall be payable as follows:

- (a) The sum of Five Hundred Ninety Four Thousand Five Hundred Dollars (\$594,500.00) shall be payable in cash or by certified, cashier's or title company check at Closing, to which the Deposit shall be applied and credited at Closing on the purchase of the Additional Property; and
- (b) The balance shall be payable after Closing pursuant to the provisions of Section 2 of the Agreement of Sale relating to the payment of the Home Sale Component, and subject to the credits provided for in the Agreement of Sale against the Home Sale Component (including without limitation those in Sections 2.C., 2.D. and 7(a)(v) [for purposes of which the current tapping fee in East Caln Township of \$2,200.00 shall be used for the Additional Property] of the Agreement of Sale). If the tapping fee or other charges for connection to public sewer for the Additional Property or the Option Property in East Caln Township are not controlled by the Borough of Downingtown (or a municipal authority thereof) and exceed 110% of those fees now in effect, then either party can terminate this Agreement with respect to the Additional Property and/or the Option Property upon written notice to the other party ("Termination Notice") unless the other party agrees to bear such additional cost by giving written notice given within ten (10) business days after receipt of the Termination Notice.

4. Security for Home Sale Component.

(a) Buyer's obligation to pay the Home Sale Component (both as to the Property and the Additional Property) shall be secured by a tri-party agreement among Buyer (or any Permitted Assignee, as applicable), Seller and a financial institution, or by an irrevocable standby letter of credit issued to Seller by a financial institution for Buyer's account, for the purpose of providing financial security for the payment of the Home Sale Component to Seller in a manner similar to arrangements providing financial security for the completion of improvements under the Municipalities Planning Code. The terms of any such security document shall be mutually acceptable to the parties, and shall provide for partial releases and reductions in the financial security as the Home Sale Component is paid down.

5. Grant Funds. In the event that Seller or Buyer obtains Grants (as defined in Section 2 of the Agreement of Sale) that would offset costs that Buyer has incurred or would otherwise need to incur to complete all studies, investigations, soil borings, human health and environmental risk assessments, site characterizations, soils engineering, environmental monitoring, development and completion of an Act 2 remediation plan, slab membranes for homes, clean fill cap, timber and metal

"H" pilings, structural support for roads and utilities, and other work in order to undertake environmental mitigation of the site for the intended project and obtain liability protection under "Act 2," then the aggregate Purchase Price for the Property and the Additional Property shall be increased by an amount equal to seventy-five percent (75%) of the Grants actually received. Unless contrary to the terms and conditions on which any of the Grants are awarded, if Seller receives the Grants, then Seller shall retain its share of the Grants and shall pay Buyer's share of the Grants to Buyer promptly upon receipt thereof. If, on the other hand, Buyer receives the Grants, then Buyer shall pay Seller's share thereof to Seller at Closing or, if received after Closing, promptly after receipt thereof, and Buyer shall be entitled to retain the balance.

6. Conditions of Buyer's Obligation to Purchase the Additional Property. Section 7(a) of the Agreement of Sale (Conditions to Performance; Buyer's Conditions) is hereby amended to add the following:

(a) Buyer's obligations to purchase the Additional Property and to pay the Additional Purchase Price pursuant to this Amendment is subject to and conditioned upon Buyer having obtained, at Buyer's sole cost and expense, from the Borough of Downingtown, East Caln Township, and all other applicable governmental authorities all final and un-appealable (and un-appealed) zoning amendments, special exceptions, conditional use approvals, subdivision and land development approvals and other permits and approvals as may be necessary in order to permit Buyer's development of the Property and Additional Property substantially as depicted on **Exhibit "E"** attached to the Agreement of Sale ("Proposed Plan"), for a minimum of 268 residential dwelling units in total, with 68 of such units in East Caln Township (exclusive of units that may be approved to be located on the Option Property), substantially in accordance with the Proposed Plan, and all other final and unappealable permits and approvals from all federal, state and local governmental agencies having jurisdiction, and Buyer securing all necessary public sanitary sewer capacity (treatment and conveyance) in order to provide adequate sanitary sewer service for such development (collectively, the "Additional Property Approvals").

(b) Seller agrees to cooperate with Buyer in connection with Buyer's applications for the Additional Property Approvals and, to the extent that the proposed development of the Additional Property entails the construction of improvements on that portion of the Property in Downingtown Borough, or entails service of the proposed dwelling units to be constructed in East Caln Township by existing improvements or improvements to be constructed in Downingtown Borough, Seller agrees to cooperate in connection with the approval thereof. Nothing herein may be construed to obligate (or permit) Seller to treat Buyer in any manner differently from or more favorably than any landowner, citizen or developer in the Borough of Downingtown.

(c) If Buyer has not obtained the Additional Property Approvals on or before the last day for Closing as provided in Section 11(a) of the Agreement of Sale, provided that Buyer has exerted good faith efforts to obtain the Additional Property Approvals, and that Buyer has proceeded expeditiously and continuously in the application for such Additional Property Approvals, Seller agrees that Buyer shall have the right to further extend the deadline for Closing (with respect to the Additional Property only) for an additional period of

six (6) months. If Buyer has not obtained the Additional Property Approvals by the date for Closing under the Agreement of Sale (as the same may have been extended pursuant to the preceding sentence), Buyer (but not Seller) shall have the right either to waive this condition and proceed to Closing on the Additional Property, or to terminate Buyer's obligation to purchase the Additional Property (independently of and without terminating Buyer's right or obligation to purchase the Property upon the terms and conditions set forth in the Agreement of Sale); and in such latter event, the Agreement of Sale shall remain in full force and effect as same may have been amended by this Amendment but without regard to the provisions of this Amendment that relate to the Additional Property. It is understood and agreed that Buyer shall have the right, subject to the Agreement of Sale, to purchase the Property without having first purchased the Additional Property, but Buyer shall not be obligated to purchase the Additional Property unless Buyer has already purchased, or is simultaneously closing on the purchase of, the Property. Neither Buyer's inability to obtain the Additional Property Approvals nor Buyer's election to terminate its obligation to purchase the Additional Property for failure of any condition relating to the Additional Property shall entitle Seller to terminate the Agreement of Sale with respect to the Property.

7. Assignment. At Closing, Buyer shall have the right to assign its rights under the Agreement of Sale and this Amendment to Southdown Homes, L.P. or to another an entity controlled (directly or indirectly) by Buyer, Buyer's principals (who are Jack R. Loew and Sarah Peck) and/or Jack R. Loew and/or Sarah Peck (each, a "Permitted Assignee"). Otherwise, Buyer may only designate one or more third parties to acquire title to all or separate portions of the Property and/or Additional Property, if such designees are approved by Seller (which approval may be granted or withheld for any reason). Any such assignee (s) or nominee(s) shall enter into an appropriate agreement, including security agreements, pursuant to which they agree to be bound by all the terms and conditions of the Agreement of Sale and this Amendment and assume the obligations of Buyer that relate to the Property or Additional Property or parts thereof they are acquiring and that entail the performance of obligations after Closing. Upon an assignment to a Permitted Assignee, the Buyer named herein shall be released from further liability hereunder.

8. Coordination with "Easement Property Provisions. The Additional Property and the Option Property are designated in Section 1 of the Agreement of Sale as "Easement Properties". If (and as of the date on which) Buyer purchases the Additional Property and/or the Option Property pursuant to this Amendment, then the provisions of the Agreement of Sale relating to the Easement Properties and the easements to be granted by Seller in favor of Buyer with respect thereto shall no longer apply. However, if closing on the Property occurs before closing on the purchase of the Additional Property, such provisions shall continue to apply until Buyer acquires title to the applicable Easement Property(ies).