

AGREEMENT TO PURCHASE AND SELL REAL ESTATE

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE (the "Agreement") is made and entered into as of the ____ day of _____, 2011. The parties to this Agreement are as follows:

SELLER:

Name: Borough of Downingtown (hereinafter "Seller"),
Address: 4-10 West Lancaster Avenue
Downingtown, PA 19335
Attn: Stephen T. Sullins, Borough Manager
Phone No: 610-269-0344
Facsimile No.: 610-269-1580

SELLER'S ATTORNEY:

Name: Patrick C. O'Donnell, Esq.
Gawthrop Greenwood
Address: 17 East Gay Street, Ste. 100
P.O. Box 562
West Chester, PA 19380
Phone No: 610-431-4141
Facsimile No.: 610-431-7371
E-mail address: pcod@verizon.net

SELLER'S ALTERNATE COUNSEL:

Name: Patrick McKenna, Esq.
Gawthrop Greenwood
17 East Gay Street, Ste. 100
P.O. Box 562
West Chester, PA 19380
Phone No: 610-696-8225 x155
Email: pmckenna@gawthrop.com

BUYER:

Name: J. Loew & Associates, Inc.
(hereinafter "Buyer"),
Address: 55 Country Club Drive
Suite 200
Downingtown, PA 19335
Attn: Jack R. Loew
Phone No: 610-873-5585
Facsimile No.: 610-873-7560
E-mail address: jloew@jloew.com

BUYER'S ATTORNEY:

Name: Louis Colagreco, Esquire
Riley, Riper, Hollin & Colagreco
Address:
717 Constitution Drive
Suite 201
Exton, PA 19341
Phone No: 610-458-4400
Facsimile No.: 610-458-4441
E-mail address: lou@rrhc.com

And

Progressive Housing Ventures, LLC
Suite 210, 5 Great Valley Parkway
Malvern, PA 19355, Attention: Sarah Peck
Phone No: (610) 935-1100
Facsimile No.: (610) 983-9669
E-mail: sarah@progressivehsg.com
(collectively, "Buyer")

1. BACKGROUND. Pursuant to a Solicitation for Property Bids issued by Seller in July, 2006 (Prior RFP"), Buyer and Seller executed a certain Agreement to Purchase and Sell Real Estate dated August 17, 2007 for the Property, as defined below, which was amended by a First Amendment to Agreement to Purchase and Sell Real Estate also dated August 17, 2007, and a Second Amendment to Purchase and Sell Real Estate dated September 16, 2009 (collectively the "Prior Agreement").

As a result of unanticipated delays in the municipal land use approval process and unanticipated expenses incurred by Buyer in connection with the legal proceedings and the Appeals, as defined below, Buyer initiated discussions with Seller in 2011 with the intention of renegotiating certain provisions of the Prior Agreement. Notwithstanding Seller's belief that Buyer's request to renegotiate was justified, Seller maintained that a renegotiation of the terms of the Prior Agreement could be pursued only after first exposing the sale of the Property to the public bidding process.

Seller, therefore, issued a second Solicitation for Property Bids in September, 2011 (the "Revised RFP"), which was supplemented by public bid notice which was published in the Daily Local News on September 27, 2011, and September 30, 2011 which requested that interested parties submit bids for the purchase of the Property on or before October 17, 2011. However, no bids were submitted to Seller. On October 19, 2011, and October 21, 2011 Seller published a second public bid notice in the Daily Local News which requested submission of bids in accordance with the Revised RFP on or before November 8, 2011. Again, no bids were submitted to Seller.

As a result of the fact that no bids were submitted during two (2) successive public bid periods, Seller announced at its regular public meeting on November 9, 2011, its intention to enter into private negotiations with Buyer pursuant to Section 1641 of the Municipal Property Purchase and Sale Law ("Property Sale Law"), 73 P.S. §1641 *et seq* which has resulted in the negotiation and execution of this Agreement. The material terms of this Agreement were publicly announced at Seller's regularly scheduled meeting on Wednesday November 18, 2011. The Effective Date of this Agreement is more than thirty (30) days after the announcement date referenced in the immediately preceding sentence in conformity with the Property Sale Law.

2. PROPERTY/PARK PROPERTY. Seller agrees to sell, transfer and convey the Property to Buyer and Buyer agrees to purchase the Property from Seller upon the terms, provisions and conditions set forth herein. The "Property" is comprised of three (3) sub-parcels consisting of "Parcel 1," "Parcel 2" and "Parcel 3" which are more fully described as follows:

(a) "Parcel 1" consists of approximately 17.5 acres located in the Borough of Downingtown identified as within Tax Parcel Nos. 11-4-13, 11-4-14, and 11-4-14.2 as schematically depicted on the Tax Parcel Plan attached hereto as Exhibit "A". On April 15, 2009, Seller enacted Ordinance No. 2009-02 which created the Kardon Park Redevelopment Zoning District and on July 15 2009, Seller granted Conditional Use Approval for the development of a portion of Parcel 1 into approximately 201 multi-family residential dwellings plus 40 "live over work" rental condominium units above 20,000 square feet of commercial space (collectively the "Parcel 1 Approval"). The

proposed development of Parcel 1 is depicted on the sketch plan attached as Exhibit "B" ("Development Sketch Plan") and the Conditional Use Approval for the development of Parcel 1 is attached as Exhibit "E".

(b) "Parcel 2" consists of approximately 3.0 acres located in East Caln Township and is identified as being within Tax Parcel No. 40-1-23.1 and a part of Tax Parcel No. 11-4-23 as schematically depicted on the Tax Parcel Plan. No conditional use approval or other land development approval has been granted by East Caln Township for the development of Parcel 2; however, Buyer intends to seek approval for the development of 34 multi-family dwellings on Parcel 2 in accordance with Condition No. 18 of the Parcel 3 Approval, as defined below, as well as the cluster development provisions of the East Caln Township's R-4 Zoning regulations, as further depicted and described on the sketch plan attached hereto as Exhibit "B" ("Development Sketch Plan").

(c) "Parcel 3" consists of approximately seven (7.0) acres located in East Caln Township and is identified as Tax Parcel No. 40-1-23 as schematically depicted on the Tax Parcel Plan. On July 5, 2010, the Supervisors of East Caln Township issued its Conditional Use Decision and Order which permitted the development of Parcel 3 with 70 multi-family dwellings, which includes passive recreation and stormwater managements facilities located on the Park Property, as defined below ("Parcel 3 Approval") pursuant to a sketch plan entitled "Phase One Improvement Plan, Kardon Ponds, East Caln Township," prepared by Commonwealth Engineers dated November 10, 2009 ("Parcel 3 Development Plan"), which is attached as Exhibit "C" and is also depicted on the Development Sketch Plan.

(d) The "Park Property" consists of approximately 20.1 acres, part of which is identified as Tax Parcel No. 11-4-23-E and is located in the Borough of Downingtown and the remaining part of which is identified as Tax Parcel No. 40-1-23.1-E and is located in East Caln Township and is further depicted on Exhibits "A" and "B". Except as provided below, Seller or its assigns shall retain ownership of, and the obligation to maintain, the Park Property; however, the Park Property shall be subject to the following covenants, conditions and restrictions:

(i) The metes and bounds description for the Park Property shall be adjusted as necessary to permit the development of Parcel 1 and Parcel 2 as shown on the Development Sketch Plan and Parcel 3 as shown on the Parcel 3 Development Plan, provided however, that in no event shall the net changes to the metes and bounds description of the Property result in the total area of the Park Property being decreased to an area less than 18 acres;

(ii) Seller shall, at Closing, perpetually restrict use of the Park Property as a passive park and open space (the "Public Park Restriction");

(iii) The Park Property shall at Closing be subject to such easements to be granted to Buyer (collectively the "Development Easements") as may be necessary for the installation of stormwater management facilities, wetlands plantings, walkways, public parking, grading, utilities and, if required, extension of a public street from Pennsylvania Avenue to Norwood Road, as

schematically depicted on the Tax Parcel Plan, and for the construction and maintenance of such other improvements as may be necessary or convenient to develop the Property in accordance with the Public Approvals, as defined below;

(iv) The homeowners' association (or homeowners' associations if there are more than one) shall be obligated by recorded covenant ("Park Maintenance Covenant") to maintain the stormwater management facilities and wetlands plantings. The homeowners' association shall have the right, but not the obligation to enter upon and perform general open space maintenance activities with the approval of, and subject to such reasonable conditions as may be imposed, by Seller;

(v) Consistent with the Parcel 1 Approval, the Park Maintenance Covenant shall include a financial commitment of the homeowners' association to contribute annually to the cost of maintaining the Park Property the extent and nature of which financial commitment shall be mutually approved by Buyer and Seller during the Public Approvals process, shall be prorated to each Parcel based on the total number of approved residential units and shall, in no event be less than, in the aggregate, fifty (50%) percent of the total estimated cost of maintaining the Park Property.

(vi) Any restrictions required by the East Caln Township R-4 Cluster Residential District zoning ordinance concerning the development, use and maintenance of public open space and/or as may be required as a condition of final land development approval.

3. PURCHASE PRICE. The purchase price for the Property ("Purchase Price") shall be allocated and separately paid with respect to Parcel 1, Parcel 2 and Parcel 3 as follows:

(a) Parcel 1 Purchase Price. The purchase price for Parcel 1 shall be the greater of: (i) \$2,610,000 ("Parcel 1 Minimum Price"); or (ii) the sum of (A) \$1,720,500 ("Parcel 1 Base Price") plus (B) an amount equal to two and one-half percent (2.5%) of the gross purchase price received by Buyer from settlements on the sale of residential units from Parcel 1 to third party homebuyers as shown on lines 401 through 405 of the HUD-1 settlement statements (the "Home Sale Component"). The Parcel 1 Purchase Price shall be payable as follows:

(i) The Parcel 1 Base Price shall be payable in cash or by certified, cashier's or title company check at Closing.

(ii) The balance of the Parcel 1 Purchase Price shall be paid in installments upon the sale of each residential unit in Parcel 1, and each such installment shall be an amount equal to the Home Sale Component computed in connection with the sale of each residential unit.

(iii) If after settlement on the sale of all the residential units in Parcel 1 the aggregate amount of payments made by Buyer under clauses (i) and (ii) is (or will be) less than the Parcel 1 Minimum Price (the amount of the difference is referred to as the "Parcel 1 Shortfall")

Buyer shall pay the Parcel 1 Shortfall in cash to Seller on the date of settlement on the last residential unit in Parcel 1.

(iv) The Parcel 1 Minimum Price shall be subject to adjustment for the credits identified in Paragraph 3(d) below as well as elsewhere in this Agreement.

(v) In the event that the number of multi-family dwelling units finally approved in Parcel 1 (the "Final Parcel 1 Yield") is less than 201 units, excluding the live over work units, the Parcel 1 Base Price and Parcel 1 Minimum Price shall be reduced by Fifteen Thousand Dollars (\$15,000.00) per residential unit for the number of units by which the Final Parcel 1 Yield is less than 201. In the event that the Final Parcel 1 Yield is less than 100 residential units, Buyer shall have the right to terminate this Agreement and receive back the Deposit (unless previously applied to the purchase of a Parcel) with all interest accrued thereon.

(vi) In the event that Buyer takes down Parcel 1, regardless of the number of units approved, Buyer shall undertake the environmental remediation of Parcel 1 in its entirety.

(b) Parcel 2 Purchase Price. The purchase price for Parcel 2 shall be the greater of: (i) \$900,000 ("Parcel 2 Minimum Price"); or (ii) the sum of (A) \$600,000 ("Parcel 2 Base Price") plus (B) an amount equal to two and one-half percent (2.5%) of the gross purchase price received by Buyer from settlements on the sale of residential units from Parcel 2 to third party homebuyers as shown on lines 401 through 405 of the HUD-1 settlement statements (the "Home Sale Component"). The Parcel 2 Purchase Price shall be payable as follows:

(i) The Parcel 2 Base Price shall be payable in cash or by certified, cashier's or title company check at Closing.

(ii) The balance of the Parcel 2 Purchase Price shall be paid in installments upon the sale of each residential unit in Parcel 2, and each such installment shall be an amount equal to the Home Sale Component computed in connection with the sale of each residential unit.

(iii) If after settlement on the sale of all the residential units in Parcel 2 the aggregate amount of payments made by Buyer under clauses (i) and (ii) is (or will be) less than the Parcel 2 Minimum Price (the amount of the difference is referred to as the "Parcel 2 Shortfall") Buyer shall pay the Parcel 2 Shortfall in cash to Seller on the date of settlement on the last residential unit in Parcel 2.

(iv) The Parcel 2 Minimum Price shall be subject to adjustment for the credits identified in Paragraph 3(d) below as well as elsewhere in this Agreement.

(v) In the event that the number of multi-family dwelling units finally approved in Parcel 2 (the "Final Parcel 2 Yield") is less than 34 units, Buyer shall have the option, at Buyer's sole election of: (1) reducing the Parcel 2 Base Price and the Parcel 2 Minimum Price by Fifteen Thousand Dollars (\$15,000.00) per residential unit for the number of units by which the Final Parcel

1 Yield is less than 34; or (2) of terminating this Agreement and receive back the Deposit (unless previously applied to the purchase of a Parcel) with all interest accrued thereon. Provided, however, that if Buyer proceeds with the purchase of Parcel 1 but not with the purchase of Parcel 2, Buyer shall nevertheless undertake the environmental remediation of Parcel 2 and adjacent lands in East Caln township within parcel 40-1-23.1E up to the boundaries of the Parcel 3 Development Plan shown in Exhibit "C" and shall achieve an Act 2 liability release through DEP for Parcel 2.

(c) Parcel 3 Purchase Price. The purchase price for Parcel 3 shall be the greater of: (i) \$860,000 ("Parcel 3 Minimum Price"); or (ii) the sum of (A) \$335,500 ("Parcel 3 Base Price") plus (B) an amount equal to two and one-half percent (2.5%) of the gross purchase price received by Buyer from settlements on the sale of residential units from Parcel 3 to third party homebuyers as shown on lines 401 through 405 of the HUD-1 settlement statements (the "Home Sale Component"). The Parcel 3 Purchase Price shall be payable as follows:

(i) The Parcel 3 Base Price shall be payable in cash or by certified, cashier's or title company check at Closing.

(ii) The balance of the Parcel 3 Purchase Price shall be paid in installments upon the sale of each residential unit in Parcel 3, and each such installment shall be an amount equal to the Home Sale Component computed in connection with the sale of each residential unit.

(iii) If after settlement on the sale of all the residential units in Parcel 3 the aggregate amount of payments made by Buyer under clauses (i) and (ii) is (or will be) less than the Parcel 3 Minimum Price (the amount of the difference is referred to as the "Parcel 3 Shortfall") Buyer shall pay the Parcel 3 Shortfall in cash to Seller on the date of settlement on the last residential unit in Parcel 1.

(iv) The Parcel 3 Minimum Price shall be subject to adjustment for the credits identified in Paragraph 3(d) below as well as elsewhere in this Agreement.

(v) In the event that the number of multi-family dwelling units finally approved in Parcel 3 (the "Final Parcel 3 Yield") is less than 70 units, the Parcel 3 Base Price and the Parcel 3 Minimum Price shall be reduced by Fifteen Thousand Dollars (\$15,000.00) per residential unit for the number of units by which the Final Parcel 3 Yield is less than 70. In the event that the Final Parcel 3 Yield is less than 64 residential units, Buyer shall have the right to terminate this Agreement and receive back the Deposit (unless previously applied to the purchase of a Parcel) with all interest accrued thereon.

(d) Seller's current, standard sewer connection (tapping) fee of \$2,500 for the first dwelling unit and \$2,000 for each dwelling unit thereafter shall apply to all approved units within the Property. Seller agrees to supply sewage capacity to serve the development depicted in the Development Sketch Plan and Parcel 3 Development Plan as follows: Seller agrees to sell to the Township of East Caln ("East Caln") 26,000 gallons per day ("GPD") of sewer capacity at a price of \$12.50 per gallon. Payment(s) shall be made by East Caln on a per gallon basis on or before the

issuance of a building permit for the Parcel 3 Development Plan and the Parcel 2 Sketch Plan as applicable. Payment in full for the entire 26,000 GPD capacity must be made by East Caln within ten (10) years of December 21, 2011. The sale may result in a minor change to the operating percentages associated with the Downingtown Area Regional Authority ("DARA") agreement for Seller and East Caln which those parties agree to abide by and to execute any amendment to the DARA operating agreement which may be so required. The above-referenced sale of sewer capacity is contingent upon all members of DARA waiving their interests in purchasing an equivalent gallonage from Seller. In the event that all DARA members do not agree to waive their interests in purchasing an equivalent gallonage from Seller, Seller reserves its rights to provide the required capacity for the building out of Parcel 3 and Parcel 2 by such means as are otherwise available to Seller. . Buyer shall be entitled to purchase from East Caln 104 Equivalent Dwelling Units ("EDU's") at a tap fee cost equal to the price paid by East Caln Township to Seller for such sewer capacity. Seller agrees that to the extent that Buyer's actual sewer connection (tapping) fees paid by Buyer for sewage treatment capacity for Parcel 1, Parcel 2 and/or Parcel 3 are greater than \$2,200 per EDU, the aggregate amount of such excess ("Sewer Cost Excess") shall be applied as a credit against the Home Sale Component payments otherwise due to Seller on any acquired Parcels until such time as the Sewer Cost Excess has been fully offset unless Buyer has received the Public Approvals for Parcel 1 units in which case Seller may elect to reduce the applicable tapping fees in Parcel 1 up to the amount of the Sewer Cost Excess. 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.

4. DEPOSIT. Buyer and Seller acknowledge that Buyer has deposited the sum of Three Hundred Thousand Dollars (\$300,000.00) with Trident Land Title Company ("Deposit") pursuant to the Prior Agreement which is to be terminated in accordance with Paragraph 36 herein. The Deposit will be deemed to apply to this Agreement. Fifty percent (50%) of the Deposit together with all accrued interest thereon shall be applied to the Base Purchase Price at Closing of the first Parcel Closing (defined below) purchased by Buyer. The balance of the Deposit together with all accrued interest thereon shall be applied to the base price of the next Parcel Closing purchased by Buyer. The Deposit is non-refundable, except in the event Buyer elects to terminate this Agreement as a result of the fact that: (i) Buyer is unable to obtain the Public Approvals; (ii) as a result of an Adverse Decision; (iii) as a result of any other unfulfilled condition described in Paragraph 13; (iv) Seller's inability to convey title to the Property in accordance with this Agreement; and/or (v) as a result of Seller's default, and upon such termination the Deposit shall be returned to Buyer and neither party shall have any further liability or obligation hereunder except for those covenants which are expressly stated to survive a termination of this Agreement.

5. SECURITY FOR HOME SALE COMPONENT

Buyer's obligation to pay the Home Sale Component shall be secured by a second mortgage against Parcel 1, Parcel 2 and/or Parcel 3, as the case may be (in each instance the "Home Sale Component Mortgage"), which Home Sale Component Mortgage shall be subordinate in lien, payment and priority to financing obtained by the Buyer for the acquisition and development of the Parcel and the construction of site improvements and residential dwelling units on the Parcel and

Seller shall execute such subordination agreement as Buyer's lender may reasonably require. Seller shall release each residential unit from the lien of the Home Sale Component Mortgage upon tender by Buyer of the Home Sale Component payment applicable to such unit.

6. APPEALS

(a) On or about March 27, 2009, Seller, with the joinder of Buyer, filed a Petition of the Borough of Downingtown for Approval of the Sale of Real Property (with respect to Parcel 1 and Parcel 2) [the "Petition"] with the Chester County Orphans' Court at Docket No. 1509-0516, which Petition was denied by Decision and Order dated October 7, 2010, which Decision and Order is currently on appeal to the Commonwealth Court at 2392 CD 2010 ("Donated/Dedicated Property Act Appeal").

(b) On or about July 20, 2011, the Parcel 3 Approval was appealed to the Chester County Court of Common Pleas at 2010-00836 and was upheld by Decision and Order dated June 27, 2011, which Decision and Order is currently on appeal to the Commonwealth Court at _____ CD _____ ("Parcel 3 Appeal").

(c) On or about December 14, 2011, a Complaint and a Petition for Preliminary Injunctive Relief and a Complaint in Equity was filed in the Court of Common Pleas by Ann M. Feldman and Frank Manetta against the Borough of Downingtown at Docket number 11-13575.

(d) On or about December 14, 2011, a Complaint and a Petition for Preliminary Injunctive Relief and a Complaint in Equity was filed in the Court of Common Pleas by Stewart Hall, LP against Borough of Downingtown at Docket number 11-13621.

(e) The litigation enumerated in (a) through (d) above are collectively referred to herein as the "Appeals". The term "Appeal" shall also be deemed to include any other appeal or challenge filed prior to, on or after the Effective Date against any term or provision of this Agreement and/or any permit or approval necessary or convenient for the development of the Property as contemplated hereby. Buyer and Seller shall during the term of this Agreement, in good faith and with diligence, at each party's respective expense (subject to the limitations outlined in Paragraph 25), pursue litigation of the Appeals to a conclusion on the merits, to either a "Favorable Resolution", or to issuance of an adverse decision by, or denial of certiorari by, the Pennsylvania Supreme Court ("Adverse Decision"). For purposes of this Agreement, the term "Favorable Resolution" shall include any result in, or affecting the substance of any Appeal, which in Buyer's sole and absolute discretion, permits Buyer to pursue development of the Property, or any Parcel, in accordance with the Public Approvals and which shall include, but not be limited to, Seller becoming empowered to convey Parcel 1 and Parcel 2 without Orphans' Court Approval and/or the requirement to seek Orphans Court approval becoming moot. In the event Buyer is unable to obtain a favorable decision on each and every matter comprising the Appeals on or before four (4) years from the Effective Date of this Agreement, Buyer shall have the right to terminate this Agreement and receive back the Deposit (unless previously applied to the purchase of a Parcel) and all interest accrued thereon.

(f) Seller agrees that in the event Buyer is required to forfeit its right to purchase Parcel 1 and/or Parcel 2 as a result of an Adverse Decision and in the further event Seller is empowered at some later date to sell Parcel 1 and/or Parcel 2 and Seller elects to sell to a party other than Buyer within five (5) years from the date Buyer's right to purchase Parcel 1 and/or Parcel 2 is terminated, Seller shall at settlement on such Parcel reimburse Buyer for all development expenses and litigation expenses incurred by Buyer in connection with Parcel 1 and/or Parcel 2 through and including the date on which Buyer's right to purchase Parcel 1 and Parcel 2 is terminated. This covenant shall survive a termination of this Agreement.

7. NO FINANCING CONTINGENCY. Buyer's obligations under this Agreement are not contingent or conditional upon the receipt of financing by Buyer.

8. GRANT FUNDS. In the event that Seller or Buyer obtains public grant funds that are applied, either directly or by way of reimbursement to Buyer, that would offset costs that Buyer has incurred or would otherwise be required 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 any other work in order to complete the environmental mitigation of the site for the intended project and to obtain liability protection under "Act 2," the aggregate Purchase Price for the Property shall be increased by an amount equal to seventy-five percent (75%) of the Grants actually received and paid to Buyer or paid directly to offset costs.

9. INSTRUMENTS OF TRANSFER. At the Closing, Seller will convey title to the Property to Buyer by Seller's Special Warranty Deed (the "Deed"). Seller and Buyer will execute and deliver each to the other and, where applicable, file and record such instruments of conveyance, transfer and assignment, as necessary or appropriate to transfer to Buyer all of the Seller's right, title and interest in the Property, and to grant Buyer the Development Easements in accordance with Paragraph 2(d)(iii) of this Agreement.

10. TITLE MATTERS

(a) Title. The Property shall be conveyed to Buyer free and clear of all liens, encumbrances, restrictions and agreements, excepting only those matters and the title exceptions identified on Exhibit "D" attached hereto being collectively referred to as the "Permitted Exceptions". Notwithstanding anything herein to the contrary, Seller shall pay or discharge at or prior to Closing all mortgages, liens and other monetary encumbrances affecting the Property. At Closing, Seller shall execute and deliver to Buyer's title company such affidavits, indemnities and other materials as the title company reasonably requests to deliver Buyer's title insurance policy without the standard exceptions.

11. NO WARRANTIES OR REPRESENTATIONS.

(a) BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS, WITH ALL FAULTS" BASIS AND THAT BUYER HAS HAD OR WILL HAVE HAD AN OPPORTUNITY TO INSPECT THE PROPERTY AND, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS, EMPLOYEES, PROFESSIONALS, CONSULTANTS OR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION:

- (i) the quality, nature, adequacy and physical condition of the Property;
- (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater;
- (iii) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value, or adequacy for any particular purpose;
- (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property) subject to Seller's obligation with respect to the Public Approvals, as hereinafter defined);
- (v) the compliance of the Property or its operation with any applicable codes, laws, permits, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity;
- (vi) the presence or removal of Hazardous Substances (defined below) in, on, under, or about the Property or the adjoining or neighboring property;
- (vii) the condition of title to the Property;
- (viii) the leases, service contracts, or other agreements affecting the Property; and
- (ix) the economics of the operation of the Property for any purpose.

BUYER HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED REGARDING THE PROPERTY, EXCEPT WARRANTIES CONTAINED IN THE SPECIAL WARRANTY DEED, AND EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS HEREIN.

Notwithstanding the foregoing, Seller represents and warrants to Buyer that:

- (1) There are no, and there shall not be at Closing any, agreements of sale, leases or other contracts affecting the Property.
- (2) As of the Effective Date, and as of the date of Closing, there are no condemnation or similar proceedings pending or threatened with respect to the Property.

This Paragraph 11 will survive the Closing and the consummation of the transaction contemplated by this Agreement.

12. ENVIRONMENTAL CONDITIONS. Seller acknowledges that Buyer has obtained approval of a Clean Up Plan by DEP for ultimate Act 2 clearance for residential use of the Property. Seller agrees to cooperate with Buyer in the implementation of required remediation activities and to grant such Development Easements as may be necessary for same. **Buyer expressly releases Seller and agrees to waive all rights that it may have to seek contribution from Seller for any response costs that may arise as a result of the actions or inactions of Seller and any previous owner, operator or third party on or with respect to the Property relating to Hazardous Substances.**

13. CONDITIONS TO PERFORMANCE.

(a) Buyer's Conditions. Unless all of the following conditions are satisfied, Buyer will not be obligated to purchase the Property (except as such conditions may hereafter be expressly waived in writing by Buyer), and if Buyer elects to not purchase the Property as a result of failure of any such conditions, the Deposits and all interest thereon shall be refunded to Buyer:

- (i) Seller has complied with all of its agreements herein contained to be performed by it at or prior to the Closing Date; and
- (ii) From the Effective Date of this Agreement until the Closing, there has not occurred any adverse change in the physical condition of the surface, subsurface, or any improvements on the Property or the condition of title to the Property.
- (iii) The environmental condition of the Property has not changed from the Effective Date until the Closing Date.
- (iv) Buyer shall have obtained from the Borough of Downingtown, East Caln Township and all other governmental bodies and regulatory agencies having jurisdiction, all final and unappealable permits and approvals, with no appeal outstanding, necessary to develop the Property in accordance with the Parcel 1 Approval, the Parcel 3 Approval, the Development Sketch Plan and the Parcel 3 Development Plan (collectively the "Public Approvals"). Seller shall permit Buyer to seek preliminary and final subdivision and land development approvals

simultaneously in Downingtown Borough. Buyer and Seller agree that a Favorable Resolution as earlier defined could necessitate an alteration of the Development Sketch Plan including, but not limited to the land area that may be lawfully conveyed by Seller, the road configuration, and number of units (the "Revised Development Sketch Plan"). Seller agrees to grant such Development Easements as may be required for any Revised Development Sketch Plan and to permit modification of required infrastructure improvements to service such Revised Development Sketch Plan subject to Buyer's demonstration of the adequacy of such revised infrastructure to service Buyer's intended development. Notwithstanding any Revised Development Sketch plan that may result for Parcel 1, should Public Approvals be received for Parcel 1, Buyer agrees to provide the off-site improvements listed in Paragraphs 3B and 8 of the Parcel 1 Approval. 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.

- (v) The Appeals have been resolved in a manner that does not interdict the sale of the Property as contemplated herein or that does not preclude the grant of the Public Approvals as contemplated herein.
- (vi) The Pennsylvania Department of Environmental Protection ("DEP") has approved Buyer's right to implement the terms and provisions of Buyer's "Act 2" clearance separately as to Parcel 1, Parcel 2 and Parcel 3 as title to such parts of the Property are acquired by Buyer.
- (vii) The release (of record, if such restrictions are recorded) shall be obtained with respect to the so-called Project 70 restrictions on the Property, provided that any funds required by State authorities to be placed into escrow to secure the value of park improvements to be undertaken in exchange for the release of Project 70 deed restrictions from designated lands in Parcel 2 and Parcel 3 of Kardon Park shall be provided and deposited by Buyer not Seller.
- (viii) All of Seller's representations and warranties in this Agreement remain true and correct as of Closing.

(b) Seller's Conditions. Unless all of the following conditions are materially satisfied, Seller will not be obligated to sell, convey, and transfer the Property to Buyer (except as such conditions may hereafter be expressly waived in writing by Seller):

- (i) Buyer has made payment to Seller of that part of the Purchase Price payable at Closing in accordance with Paragraph 2 above; and
- (ii) Buyer has materially complied with all of its agreements herein contained to be performed by it at or prior to the Closing Date;

c) Appraisal. An appraisal of the property was previously conducted by the Seller. Seller reserves the right to obtain a new appraisal of the Property ("New Appraisal") within ninety days of this Agreement. Should the New Appraisal of the Property establish a property value in excess of the Purchase Price set forth herein, Seller reserves the right to terminate this Agreement in writing within 30 days of receipt of the New Appraisal with all deposit monies and interest thereon returned to Buyer.

14. DEFAULT.

(a) By Seller. Should Seller fail to keep or perform any of the obligations herein mentioned in this Agreement, the same will constitute a default of this Agreement and thereupon Buyer, at its option, may declare a forfeiture by written notice to Seller, and at the expiration of 15 days after such written notice, the terms of this Agreement meanwhile not having been complied with, Buyer may either (i) declare this Agreement null and void and Seller will return the Deposit to Buyer and Seller shall reimburse Buyer for all costs and expenses incurred by Buyer in connection with this Agreement on the Property, or (ii) seek specific performance. Seller will not be liable for any incidental, consequential, indirect, special, contingent, punitive or similar damages.

(b) By Buyer. Should Buyer fail to keep or perform any of the material obligations herein mentioned in this Agreement, the same will constitute a default of this Agreement and thereupon Seller, at its option, may declare a forfeiture by written notice to Buyer, and at the expiration of 15 days after such written notice, the terms of this Agreement meanwhile not having been complied with, Seller may declare the Agreement null and void and retain all payments of the Deposit made hereunder, as Seller's sole and exclusive remedy for such default sum being agreed upon by both parties as liquidated damages for the failure of Buyer to perform the duties, liabilities, and obligations imposed upon it by the terms and provisions of this Agreement and because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages.

(c) Waiver of Breach. The waiver by either party of any condition or breach by the other party of any term, covenant, or condition herein contained will not be deemed to be a waiver of any other condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

15. CLOSING.

(a) Date and Location. The purchase and sale transaction contemplated by this Agreement, subject to Paragraph 16, will close (the "Closing") within sixty (60) days after all of the conditions described in Paragraph 13 are satisfied but not later than the first business day that is two (2) years after the date on which the last of all of the matters comprising the Appeals has been finally resolved in a manner which permits the sale of the Property as contemplated by this Agreement and permits the development of the Property in accordance with the Public Approvals (the "Closing Date"). In the event all of the conditions described in Paragraph 13 are not satisfied as of the Closing Date determined in accordance with immediately preceding sentence, but Buyer is pursuing the satisfaction

of such unfulfilled conditions in good faith and with diligence, Buyer shall have the right to postpone the Closing Date for an additional period of 6 months.

(b) Seller's Obligations. At the Closing, Seller shall:

- (i) Deliver to Buyer a duly executed and acknowledged Special Warranty Deed to the Property containing a metes and bounds description that conforms to the adjustment referred to in Paragraph 2(d)(i), subject only to the Permitted Exceptions;
- (ii) Deliver to Buyer possession of the Property;
- (iii) Deliver to Buyer reasonable evidence of Seller's capacity and authority for closing the transaction;
- (iv) Execute and deliver documents reasonably requested by the Title Company as administrative requirements for closing this transaction; and
- (v) Execute and deliver the Development Easements in recordable form.
- (vi) Execute and deliver the Public Park Restriction in recordable form.
- (vii) Execute and deliver the Park Maintenance Covenant in recordable form.

(c) Buyer's Obligations. At the Closing, Buyer shall:

- (i) Make payment of the Purchase Price to Seller in accordance with Section 2 hereinabove.
 - (ii) Deliver to Seller reasonable evidence of Buyer's capacity and authority for closing the transaction; and
 - (iii) Deliver documents reasonably requested by the Title Company as administrative requirements for closing this transaction.
 - (iv) Execute and deliver the Park Maintenance Covenant in recordable form.
- (d) Taxes. The Property is currently exempt from real estate taxes. Any real estate taxes imposed following closing shall be the sole and exclusive obligation of Buyer. Transfer taxes will be paid for by Buyer.
- (e) Costs. Except to the extent specifically allocated in this Agreement, each party will pay its share of the costs associated with the Closing which are normally assessed

against Seller and Buyer in a transaction of this character in the Chester County. Buyer shall bear the cost of the Policy of Title Insurance. Each party will pay its own attorneys' fees incurred in connection with this transaction.

16. BUYER'S RIGHT TO PURCHASE SEPARATELY PARCELS 1, 2 AND 3. Buyer shall have the right to separately purchase and complete closing on Parcel 1, Parcel 2 and Parcel 3 (each a "Parcel Closing") at such time and in such order as Buyer shall determine, in Buyer's sole and absolute discretion. All terms and conditions of this Agreement applicable to the Property and to Buyer and Seller at Closing hereunder shall apply with equal force to a Parcel and to Buyer and Seller upon the purchase of a single Parcel at a Parcel Closing. Buyer shall have the right to waive any condition which is unsatisfied at the time of a Parcel Closing. Without in any way modifying the manner of establishing the Closing Date provided for in Paragraph 15 above, in the event Buyer elects to complete a Parcel Closing on an individual Parcel, Buyer will have a period of up to two (2) years from the date of such Parcel Closing to complete a Parcel Closing on a second Parcel and an additional two (2) years from the date of such second Parcel Closing to complete a Parcel Closing on a third Parcel.

17. BROKER. Seller and Buyer each represent and warrant to the other that no real estate brokers or finders are or were involved with respect to any of the transactions contemplated by this Agreement. Each party hereto will indemnify and save harmless the other from any claim or claims made by any brokers or finders for any commissions or compensation alleged to be due by reason of the indemnifying party involving such brokers or finders.

18. NOTICES. All notices, demands, elections, requests, consents and other communications hereunder must be in writing and must be given by personal delivery, facsimile (provided a copy of such notice is sent simultaneously by overnight courier service) or sent by certified or registered mail, postage prepaid, return receipt requested and addressed to the parties hereto at the addresses set forth above with copies to the Attorneys for both parties

19. NON-FOREIGN PERSON. Seller certifies and affirms that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. Seller will execute at or prior to the Closing Date such appropriate affidavit or affidavits as may be necessary to evidence the same in accordance with Treasury Department Regulation 1.1445-2T(b)(2)(iii).

20. HEADINGS. The headings contained in this Agreement are for reference purposes only and will not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

21. MERGER. All understandings and agreements heretofore had between the parties, oral or written, are merged into this Agreement, which alone fully and completely expresses their understanding.

22. ENTIRETY AND AMENDMENTS; DISCLOSURE. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No understandings, statements, promises or inducements, oral or written, have been made to Buyer with respect to the making or performance of this Agreement that are not expressed in the Agreement, and no representation, warranty, or covenant shall be implied with respect to the making or performance of the Agreement (except for any warranty or covenant implied by law that cannot be excluded by consent). Buyer acknowledges that Buyer is, by agreement with Seller, under a duty to determine such facts or law as may be material to Buyer's decision to enter into this Agreement and except for any representation or warranties expressly made in this Agreement, Buyer is not relying upon either Seller or its employees or agents to make any disclosure to Buyer.
23. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors, and assigns. This Agreement may not be assigned or otherwise transferred, including transferal by change of corporate ownership or control, without the written approval of Seller which approval may be unreasonably withheld; provided Buyer may assign this Agreement, without Seller's consent, to an entity affiliated with Buyer or in which Buyer or one or more of its principals are a member, partner or shareholder.
24. FURTHER ACTS. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Buyer and Seller agree to perform or cause to be performed at or after the Closing any and all such further acts as may be reasonably necessary to consummate the sale contemplated hereby.
25. AUTHORITY, BINDING EFFECT AND ASSIGNMENT.
- (a) Authority. Each party hereby represents and warrants to the other as follows:
- (i) it is duly organized, validly existing and qualified and empowered to conduct its business, and has full power and authority to enter into and fully perform and comply with the terms of this Agreement. Seller has obtained all consents and resolutions necessary to execute and perform its obligations under this Agreement, and Seller has the power and authority to perform its obligations hereunder without and further action;
 - (ii) neither the execution and delivery of this Agreement, nor its performance will conflict with or result in the breach of any contract, agreement, law, rule, or regulation to which such party is bound;
 - (iii) there are no actions or proceedings pending or threatened to liquidate, reorganize, place in bankruptcy or dissolve such party;