

**ADDENDUM NO. 5  
ALTERNATIVE DISPUTE RESOLUTION**

This Addendum No. 5 ("Addendum") to Deposit Receipt, Offer to Purchase Property and Escrow Instructions executed by Buyer and Seller for the purchase of the Property described therein ("Agreement") is attached to and forms a part of the Agreement. Any capitalized terms not otherwise defined herein shall have the meanings as set forth in the Agreement. If there is a conflict between the Agreement and the terms and provisions hereof, the terms and provisions of this Addendum shall control.

The purpose of this Addendum is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between Buyer and Seller after the Close of Escrow concerning the Agreement or the Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "Dispute" and collectively as "Disputes"). Alternatively, either Buyer or Seller may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY SIGNING THIS ADDENDUM, BUYER AND SELLER AGREE TO BE BOUND BY ITS PROVISIONS.**

1. **Meditation.** Subject to the provisions of Section 2.3.5 below, and except for actions in small claims court or Disputes that have already been mediated, Buyer and Seller agree to submit any and all Disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by Seller. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

**2. Arbitration.**

2.1. **Agreement to Arbitrate.** Buyer and Seller agree to resolve any Disputes not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

2.2. **Waiver of Trial by Judge or Jury.** By agreeing to resolve all Disputes through binding arbitration. Buyer and Seller each give up the right to have their respective claims and defenses decided by a judge or a jury. Instead all claims and disputes will be decided by an arbitrator or by the appeal arbitrator(s), if applicable.

2.3. **Rules Applicable to All Cases** The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the JAMS rules ("JAMS Rules") then applicable to the claims presented, as supplemented by this Addendum. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

2.3.1. **Qualifications of Arbitrators** The arbitrator shall be neutral and impartial and a retired judge with experience in construction related disputes.

2.3.2. **Appointment of Arbitrator.** The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

2.3.3. **Expenses** All fees charged by JAMS and the arbitrator shall be advanced by the Seller. If the Seller is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Buyer to reimburse the Seller for Buyer's pro rata share of the JAMS fee and arbitrators fee advanced by the Seller.

2.3.4. **Preliminary Procedures** If state or federal law requires the Buyer or Seller to take steps or procedures before commencing an action in court, then the Buyer or Seller must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Seller. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

2.3.5. **Participation by Other Parties** Buyer and Seller, to the extent either such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

2.3.6. **Rules of Law.** The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

2.3.7. **Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration, although if the arbitrator determines there is a prevailing party, the arbitrator shall award legal fees to the prevailing party.

2.4. **Additional Rules Applicable To Disputes over \$100,000.** In any arbitration in which a claim of Buyer or Seller exceeds \$100,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules or both.

2.4.1. **Qualifications of Arbitrator.** In addition to the requirements of Section 2.3.1 above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court, and shall have experience in construction related disputes.

2.4.2. **Rules of Law.** The California Evidence Code shall apply.

2.4.3. **Written Decision.** Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Buyer or Seller requests it, the arbitrator must issue a reasoned award.

2.4.4. **Additional Discovery Rights.** In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(a) **Inspection, Examination and/or Test.** The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(b) **Deposition of Opposing Party.** The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(c) **Deposition of Expert Witnesses.** The right to take the deposition of each expert witness designated by an opposing party for up to 4 hours.

(d) **Additional Depositions.** The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

2.5. **Procedure for Appeal of Certain Cases.** In any arbitration in which a claim or arbitration award of Buyer or Seller exceeds \$250,000 in value, Buyer and Seller hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

2.5.1. **Right of Appeal.** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

2.5.2. **Appellate Panel.** An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

2.5.3. **Issues on Appeal.** The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

2.5.4. **Expenses and Costs on Appeal.** The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Seller, except as provided in Section 2.5.2 above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may award, within thirty (30) days of the award, costs of the nature provided in the Federal Rules of Appellate Procedure. If the Seller is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Seller in the award of costs on appeal.

2.5.5. **New Evidence.** The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

2.6. **Federal Arbitration Act.** Buyer and Seller acknowledge that because many of the materials and products incorporated into the Unit are manufactured in other states, this Agreement evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Addendum.

2.7. **AGREEMENT TO ARBITRATION AND WAIVER OF JURY TRIAL.**

**2.7.1. ARBITRATION OF DISPUTES. BY INITIALING IN THE SPACE BELOW, BUYER AND SELLER AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND BUYER AND SELLER ARE GIVING UP ANY RIGHTS BUYER AND SELLER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, BUYER AND SELLER ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ADDENDUM. IF BUYER OR SELLER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, BUYER OR SELLER MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.**

**2.7.2. WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, BUYER AND SELLER AGREE THAT ALL DISPUTES SHALL BE TRIED BEFORE A**

**JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. SELLER AND BUYER EACH HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR SELLER'S FAILURE TO DISCLOSE MATERIAL FACTS. SELLER AND BUYER HEREBY COVENANT AND AGREE THAT THEIR MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THEIR RESPECTIVE SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF SELLER OR BUYER OR THEIR SUCCESSORS AND ASSIGNS.**

**I/WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES TO BINDING ARBITRATION.**

**BUYER'S INITIALS: X \_\_\_\_ X. \_\_\_\_ ; SELLER'S INITIALS: X \_\_\_\_**

2.8. **Final and Binding Award.** The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

2.9. **Survival; Successors and Assigns.** The rights and obligations of the parties pursuant to this Addendum shall survive the Close of Escrow. This Addendum and the rights, duties and obligations of Buyer and Seller shall be binding upon and shall inure to the benefit of the successors and assigns of Seller and, subject to any limitation on assignment contained in this Agreement, to the heirs, executors, administrators, successors and assigns of Buyer.

2.10. **Severability.** In addition to and without limiting the effect of any general severability provisions of this Agreement, if the arbitrator or any court determines that any provision of this Addendum is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Addendum shall be conducted under the remaining enforceable terms of this Addendum.

**BY SIGNING THIS ADDENDUM, BUYER AND SELLER AGREE TO BE BOUND BY ITS PROVISIONS.**

\_\_\_\_\_  
Buyer

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
BUYER

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name

MSGG EL DORADO REALTY PARTNERS, L.LC.,  
a Delaware limited liability company

By: El Dorado Realty Partners, LLC, a Delaware  
limited liability company, a managing member

By: Downtown Loft Properties I, LLC, a  
Delaware limited liability company,  
its sole member and manager

By: \_\_\_\_\_  
William R. Stevenson, Vice President