

**REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEAN CITY, NEW JERSEY**

**AND**

**BAYFRONT PRESERVATION FOUNDATION, LLC**

**Dated: June \_\_\_, 2014**

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**THIS REDEVELOPMENT AGREEMENT** (the "Agreement") made this \_\_\_\_ day of June, 2014 (the "Effective Date") by and between

**The City of Ocean City**, a body corporate and politic of the State of New Jersey, located in the County of Cape May and having its offices at 861 Asbury Avenue, Ocean City, New Jersey 08226 (the "City");

and

**Bayfront Preservation Foundation, LLC**, a limited liability company of the State of New Jersey, having its offices at 6825 Tilton Road, Building C, Egg Harbor Township, New Jersey 08234, and acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redeveloper" and, together with the City, the "Parties").

#### **WITNESSETH**

**WHEREAS**, the real property shown on the current tax map of the City as Block 911, lots 1, 1.01, 1.02, 2, 2.01, 3, 3.01, 4 & 4.01, and the Vacated Area (as defined below) and located at Palen Avenue and Tenth Street within the City (hereinafter, the "Property" or "Rehabilitation Area"), has been of grave concern to the City due to its deteriorated condition, the unknown condition of underground storage tanks, the dilapidated condition of the bulkheads, docks and piers, the environmental risks, flooding risks and risks to navigation and the consistent pattern of late payment of taxes assessed thereon; and

**WHEREAS**, on February 28, 2013, the City adopted resolution 13-49-160 requesting that the City of Ocean City Planning Board (the "Planning Board") review the Property (except for the Vacated Area) and make a recommendation regarding the Property (except for the Vacated Area) as an "area in need of rehabilitation" under section 14 of the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, *et seq.*) (the "Act"); and

**WHEREAS**, on March 13, 2013, the Planning Board adopted a resolution recommending the Property (except for the Vacated Area) as an "area in need of rehabilitation" under the Act; and

**WHEREAS**, on March 14, 2013, the City adopted resolution 13-49-179 declaring the Property (except for the Vacated Area) an "area in need of rehabilitation" pursuant to the Act; and

**WHEREAS**, on September 25, 2013, the Planning Board reviewed the "Redevelopment Plan Palen Avenue and Tenth Street" prepared by Tiffany CuvIELLO, PP, LLC, dated August 21, 2013; recommended minor revisions; and by resolution dated October 9, 2013, found such redevelopment plan to be substantially consistent with the City's Master Plan; and

**WHEREAS**, on November 21, 2013, after reviewing the recommendations made by the Planning Board, the City finally adopted ordinance 13-35 approving the "Redevelopment Plan

Palen Avenue and Tenth Street" prepared by Tiffany CuvIELLO, PP, LLC, dated October 18, 2013 (the "Redevelopment Plan") for the Property; and

**WHEREAS**, pursuant to Section 4 of the Act and ordinance 13-35 adopted on November 21, 2013, the City has designated the City to act as the "redevelopment entity" (as such term is defined in the Act) for the Property and to exercise the powers contained in the Act to facilitate the development of the Project; and

**WHEREAS**, the purpose of the Redevelopment Plan, among other things, is to encourage the revitalization and redevelopment of the dilapidated marina on Palen Avenue and Tenth Street, to protect and enhance the use of land along the Great Egg Harbor Bay for the purpose of conducting marine commercial activities, to provide for the renewal and revitalization of a pre-existing marina, to enhance the opportunities for commercial marina development along the Great Egg Harbor Bay, to encourage opportunities for new marine commercial development and to create new job opportunities; and

**WHEREAS**, the Redeveloper submitted to the City a proposal to undertake the acquisition and construction of a mixed-use building with residential and retail uses, associated on-site parking, boat slips and fueling areas (as more fully described herein, the "Project"); and

**WHEREAS**, the Redeveloper has submitted to the City information consisting of documentation evidencing financial responsibility and capability with respect to the proposed redevelopment, estimated total development costs, time schedule for commencement and completion of the Project and a concept plan; and

**WHEREAS**, on June [\_\_\_], 2014, the City adopted resolution [NUMBER] designating the Redeveloper as "redeveloper" (as such term is defined in the Act) of the Property; and

**WHEREAS**, the City evaluated the Redeveloper's proposal according to criteria which included financial capabilities, experience, expertise, and project concept descriptions and determined to commence negotiations with Redeveloper to enter into a redevelopment agreement; and

**WHEREAS**, the Redeveloper has agreed to redevelop the Property in accordance with the Redevelopment Plan and the Redeveloper has agreed to devote substantial cash assets and/or borrowed funds toward the completion of the redevelopment of the Property; and

**WHEREAS**, the Redeveloper has represented to the City that, due largely to the existing environmental conditions of the Property, but for certain interim financing to be provided by the City, the Redeveloper does not have sufficient cash assets and borrowed funds to complete the redevelopment of the Property; and

**WHEREAS**, the City has agreed to provide certain short-term financing for the acquisition and redevelopment of the Property on terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to the Act, the Parties desire to enter into an agreement that sets forth the terms and conditions pursuant to which the Property is to be redeveloped; and

**NOW, THEREFORE**, in consideration of the promises and mutual representations, covenants and agreements herein contained, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

## **ARTICLE 1.**

### **DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

**Section 1.1 Definitions.** As used in this Agreement, capitalized terms shall have the meanings ascribed to such terms either i) as used in context, or ii) or as specifically defined within this Agreement. Terms listed in the singular form shall include the plural and words listed in the plural shall include the singular.

"Act" has the meaning set forth in the Recitals.

"Agreement" has the meaning set forth in the Recitals.

"Applicable Law" means any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

"Bankruptcy Code" means title 11 of the United States Code (11 U.S.C. §§ 101-1330).

"Bond Counsel" means McManimon, Scotland & Baumann, LLC, or any other nationally recognized firm in the area of municipal finance and appointed by the City.

"Building" means the mixed use building for retail and residential uses as more particularly described in the Redevelopment Plan and as set forth in the Concept Plans. Pursuant to the Redevelopment Plan and the Concept Plans, the Redeveloper shall design and construct the Building, subject to the Redeveloper obtaining all Governmental Approvals and financing sufficient to design and construct the Building. The Redeveloper shall use commercially reasonable efforts to obtain all Governmental Approvals, and market rate construction and permanent financing sufficient to design and construct the Building as set forth in the Concept Plans. Redeveloper reserves the right to modify the size (and, to the extent necessary, the design) of the Building to comport with Governmental Approvals and available financing. Notwithstanding any other provision of this Agreement to the contrary, unless mutually agreed to by the Parties in a written amendment hereto, the Building is not a City Financed Improvement. Accordingly, the Building shall not be subject to (a) any Applicable Law requirements associated with public financing; (b) the Guaranty; (c) the Construction Schedule; (d) any reporting



requirements; (e) the Completion Date; (f) the Escrow Account; or (g) consideration in the determination and issuance of the Certificate of Completion for the Project Improvements.

"Business Day" has the meaning set forth in Section 17.12.

"CAFRA" means the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.

"CAFRA Permit" means the permit required for the Project Improvements issued by the NJDEP pursuant to CAFRA.

"Certificate of Completion" has the meaning set forth in Section 9.2.

"Certificate of Occupancy" means a permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project Improvements upon completion of all or a portion of the Project Improvements.

"City" has the meaning set forth in the Recitals.

"City Costs" means all reasonable and necessary out of pocket costs incurred by the City in connection with the Project Improvements, which costs shall include any fees and costs of any outside professional consultant, contractor or vendor retained by the City, including outside attorneys, technical consultants, planners, financial consultants and appraisers, among others, and all out of pocket costs and expenses of the City relating to the issuance of the City Notes. Notwithstanding any other provision of this Agreement to the contrary, (a) the City Costs shall not include any costs that are duplicative of costs incurred by the Redeveloper, including but not limited to, fees assessed pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or in connection with the Remediation of the Property; (b) the amount of the City Costs related to the issuance of the City Notes shall not exceed two thousand five hundred dollars (\$2,500.00) for the issuance of each City Note; and (c) the amount of the City Costs other than those costs related to the issuance of the City Notes shall not exceed twenty five thousand dollars (\$25,000.00).

"City Financed Improvements" means the acquisition cost of the Property and the Project Improvements, but does not include the Building.

"City Financing Amount" means an aggregate amount not to exceed \$2,600,000.00.

"City Mortgage" means the mortgage substantially in the form included in **Exhibit G**; which mortgage shall secure the Redeveloper's payment obligations under the Redeveloper Note and performance obligations under this Agreement

"City Notes" means the Initial Bond Anticipation Note, the Refunding Bond Anticipation Notes and the Last Bond Anticipation Note.

"City Payment Instructions" means the written instructions from the City Chief Financial Officer setting forth the amount of interest due on the then maturing City Note, the Principal Payment due on the then maturing City Note and the wiring instructions for payment to the City of such amounts.

"City Remediation Amount" means an amount not to exceed \$196,279

"Claims" has the meaning set forth in Section 14.1.

"Commence Construction" or "Commencement of Construction" means the undertaking by Redeveloper of any actual physical demolition or construction of the Project Improvements, including but not limited to, repair, renovation, rehabilitation, demolition, installation, site preparation, Remediation or construction of structures or construction or upgrading of infrastructure.

"Completion" or "Completion of Construction" means (i) that all material Work related to the City Financed Improvements has been completed, acquired and installed in accordance with the terms hereof, the Redevelopment Plan, and in compliance with all Applicable Laws so that the City Financed Improvements may be used and operated under the applicable provisions hereof, and (ii) that all Governmental Approvals required for the City Financed Improvements are in full force and effect. Provided that the City Financed Improvements are otherwise in compliance with the foregoing, "Completion" shall be deemed to have occurred notwithstanding that certain immaterial portions of the Work relating to the City Financed Improvements remain to be completed, as long as (a) the Redeveloper has prepared and delivered to the City a "punch list" of items requiring completion or correction by the Redeveloper in order for the Redeveloper to materially comply with the terms hereof, (b) such "punch list" items have been reasonably agreed to by the City Engineer, and (c) such "punch list" items are capable of being completed within 180 Days of the date of Completion.

"Completion Date" means the date 900 Days after the Redeveloper receives the CAFRA Permit, subject to extension as provided in this Agreement, or by mutual, written agreement of the Parties consistent with this Agreement.

"Concept Plans" means collectively the following plans prepared by Joseph H. Maffei of Engineering Design Associates: (a) Cover Sheet dated July 24, 2013, and revised September 12, 2013; (b) Overall/Existing Condition/Demolition Plan dated July 24, 2013, and revised September 12, 2013; (c) Major Site Plan dated July 24, 2013, and last revised September 12, 2013; (d) Grading & Drainage Plan dated July 24, 2013, and last revised September 12, 2013; (e) Landscaping and Lighting Plan dated July 24, 2013, and last revised September 12, 2013; (f) Engineering Detail Plan, page 1, dated July 24, 2013; (g) Engineering Detail Plan, page 2, dated July 24, 2013, and revised September 12, 2013; and (h) Soil Erosion & Sediment Control Plan dated July 24, 2013, and plans prepared by Daniel Wheaton, Registered Architect: (a) A-1 Cover Sheet dated August 12, 2013; (b) A-2 Exterior Elevations dated August 12, 2013; (c) A-3 Ground Floor & First

Floor Plans dated August 12, 2013; (d) A-4 Second Floor & Third Floor Plans dated August 12, 2013, all of which are attached hereto as Exhibit A.

"Confidentiality Agreement" has the meaning set forth in Section 4.3(c).

"Construction Period" means the time period beginning on the date of Commencement of Construction and ending on the date of Completion of Construction.

"Construction Schedule" means the schedule attached hereto as Exhibit B, which designates the order of and timeframes for phasing of development of the Project Improvements in the Rehabilitation Area as required by this Agreement.

"County" means the County of Cape May, New Jersey.

"Days" has the meaning set forth in Section 17.12.

"Declaration" has the meaning set forth in Section 7.2.

"Effective Date" has the meaning set forth in the Recitals.

"Environmental Law" or "Environmental Laws" means any law relating to pollution or the environment, including laws relating to noise or to emissions, discharges, releases or threatened releases of Hazardous Materials or otherwise relating to the presence of Hazardous Materials, including without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Redevelopment (42 U.S.C. §9601 et seq.), (b) the Resource Conservation and Recovery Act (42 U.S.C. §6901-6987), (c) the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), and (d) the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), and including the rules or regulations now existing or hereinafter enacted thereunder.

"Escrow Account" has the meaning set forth in Section 4.2.

"Event of Default" has the meaning set forth in Section 13.1.

"First Mortgage" has the meaning set forth in Section 5.4(c).

"Force Majeure Event" has the meaning set forth in Section 15.1.

"Governmental Applications" means all necessary applications required to be prepared and filed with any Governmental Bodies for Governmental Approvals.

"Governmental Approvals" means all necessary reviews, consents, permits or other approvals of any kind legally required by any City, County, State or federal governmental or quasi-governmental entity required to be obtained with respect to the Project, the Property, with all applicable appeal periods having expired without any appeal having been taken by a third party therefrom or, if an appeal has been taken, such appeal has

been disposed of to the reasonable satisfaction of the Redeveloper without the right to further appeal or, if there is a right to further appeal, the time period therefor has expired without a further appeal having been taken.

"Governmental Body" or "Governmental Bodies" means any Federal, State, County or City agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government, including the City.

"Guarantors" means Thomas Gill and Beverley Gill.

"Guaranty" means the personal guaranty attached hereto as Exhibit C.

"Hazardous Materials or Substances" means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any Applicable Law.

"Indemnified Parties" and "Indemnifying Party" each have the meaning set forth in Section 14.1.

"Initial Bond Anticipation Note" has the meaning set forth in Section 5.1.

"Initial Issue Date" means the date of issuance of the Initial Bond Anticipation Note.

"Last Bond Anticipation Note" has the meaning set forth in Section 5.1.

"Local Bond Law" means the Local Bond Law, chapter 169 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof, N.J.S.A. 40A:2-1 et seq.

"Municipal Land Use Law" means the Municipal Land Use Law, chapter 291 of the Pamphlet Laws of 1975 of the State, and the acts amendatory thereof, N.J.S.A. 40:55D-1 et seq.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Outstanding Redeveloper Loans" has the meaning set forth in Section 5.4(b).

"Parcel 1" has the meaning set forth in Section 5.4(c).

"Party" or "Parties" has the meaning set forth in the Recitals.

"Performance and Maintenance Bonds" has the meaning set forth in Section 10.4.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.

"Planning Board" has the meaning set forth in the Recitals.

"Principal Payment" means, the principal reduction payment by Redeveloper pursuant to the following schedule:

<u>Year</u>	<u>Note Maturing</u>	<u>Principal Payment</u>
2	Initial Bond Anticipation Note	\$0
3	Refunding Bond Anticipation Note	\$0
4	Refunding Bond Anticipation Note	1/20 <sup>th</sup> of the outstanding principal amount
5	Refunding Bond Anticipation Note	1/20 <sup>th</sup> of the outstanding principal amount
6	Refunding Bond Anticipation Note	1/20 <sup>th</sup> of the outstanding principal amount
7	Last Bond Anticipation Note	100 % of the outstanding principal amount

"Project" has the meaning set forth in the Recitals.

"Project Improvements" means the repair, renovation, removal, rehabilitation, or demolition, design and/or installation of any: (a) structures on the Property; (b) underground storage tanks and related systems together with associated Remediation of the Property in accordance with Applicable Law (c) bulkheads; (d) piers and fuel docks; (e) parking field; (f) landscaping; and (g) amenities necessary for the implementation and completion of the Project Improvements and the Building, all of which are more specifically described in the Redevelopment Plan and on the Concept Plans.

"Public Improvements" means any off tract renovations, improvements and/or installations located outside the Rehabilitation Area, including but not limited to concrete curbing, sidewalks, roadway base/surface, sewers, drainage, grading, street lighting, street furniture, signage, utilities, plantings and appropriate traffic control in and around Palen Avenue and West 10<sup>th</sup> Street. Notwithstanding the foregoing, Public Improvements shall not include any site improvements required in accordance with N.J.S.A. 40:55D-1, et seq., by the Planning Board.

"Property" has the meaning set forth in the Recitals.

"Redeveloper" has the meaning set forth in the Recitals.

"Redeveloper Covenants" has the meaning set forth in Section 7.1.

"Redeveloper Default" means the occurrence by Redeveloper of an Event of Default.

"Redeveloper Mortgage Bank" means the financial institution that issues the First Mortgage.

"Redeveloper Note" means the promissory note of the Redeveloper in the form attached hereto as **Exhibit F**.

"Redeveloper Parties" has the meaning set forth in Section 3.2.

"Redevelopment Plan" has the meaning set forth in the Recitals.

"Refunding Bond Anticipation Note" has the meaning set forth in Section 5.1.

"Rehabilitation Area" has the meaning set forth in the Recitals.

"Remainder Parcel" has the meaning set forth in Section 5.4(b).

"Remediation" means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of Hazardous Substances, known or unknown, on, under or migrating to or from the Property, in accordance with Applicable Law, Environmental Law and Governmental Approvals required to implement the Redevelopment Plan.

"Remediation Contract" has the meaning set forth in Section 5.4(a)(ii).

"Remediation Permits" means any applicable permit, license or approval issued by NJDEP (or other federal or state regulatory agency or local governmental entity or authority having competent jurisdiction) necessary for the Remediation, as the same may have been amended or supplemented from time to time subsequent to the Effective Date and prior to the date that the Remediation is Completed, under Applicable Laws.

"State" means the State of New Jersey.

"Termination Date" means the date upon which this Agreement is terminated subsequent to the issuance of a Certificate of Completion for the Project Improvements, or such earlier date if terminated in accordance with the terms of this Agreement.

"Transfer" has the meaning set forth in Section 11.3.

"Vacated Area" means certain public property adjacent to the Property and more particularly described in **Exhibit H** attached hereto.

"Work" has the meaning set forth in Section 10.1.

**Section 1.2 Interpretation and Construction.** In this Agreement, unless the context expressly otherwise requires:

(i) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the Effective Date.

(ii) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(iii) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed. The words "consent" or "approve" or words of similar import, shall mean the prior written consent or approval of the City or Redeveloper, as the case may be, unless expressly stated to the contrary herein.

(iv) Each right of the City or Redeveloper to review or approve any actions, plans, specifications, or other obligations hereunder shall be exercised by the official(s) with the legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the either Party, the applicable Person shall inform the Person requesting such information of all applicable officials having requisite approval powers to review or grant such requests for approval.

(v) All references to Recitals, Articles, Sections or Exhibits shall, unless otherwise indicated, refer to the Recitals, Articles, Sections or Exhibits in or attached to this Agreement.

(vi) Words importing a particular gender mean and include correlative words of every other gender.

(vii) All notices to be given hereunder and responses thereto shall be given, unless a certain number of Days is specified, within a reasonable time, which shall not be less than 15 Days nor more than 30 Days, or as otherwise expressly provided in this Agreement, or unless context dictates otherwise.

(viii) Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

(ix) The phrase "sole and absolute discretion" shall, in each instance, be construed as permitting the applicable Party the right to exercise its judgment without limitation and make a determination for no reason or any reason whatsoever.

**[End of Article 1]**

## ARTICLE 2.

### REDEVELOPER DESIGNATION, DESCRIPTION OF PROJECT

**Section 2.1 Designation of Redeveloper.** The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the City and the Redeveloper in connection with the development of the Project by the Redeveloper. The Redeveloper has been selected by the City through a resolution, as set forth in the Recitals hereof, wherein the City chose the Redeveloper to be the redeveloper of the Rehabilitation Area, and the City hereby affirms and agrees that the Redeveloper is designated and appointed as the exclusive redeveloper of the Rehabilitation Area. In connection with such designation and appointment, the Redeveloper has the exclusive right to perform and to have others perform any and all development and redevelopment activities, residential, commercial, industrial and otherwise, on and about the Rehabilitation Area. Each of the Parties agrees that all development and redevelopment on and about the Rehabilitation Area will only be authorized and may only be undertaken by the Redeveloper under the framework and in accordance with the terms hereof. Further, the City agrees that it will not negotiate or entertain for the provision of another redeveloper or developer for the Rehabilitation Area or any portion thereof while this Agreement is in effect.

**Section 2.2 The Project.** The Project shall consist of the acquisition of the Property by the Redeveloper and the repair, renovation, removal, rehabilitation, or demolition, design and/or installation of the Project Improvements. The Redeveloper agrees to undertake the Project under the terms of this Agreement. The Parties acknowledge that the Redeveloper shall also have the right and shall diligently pursue funding and all Governmental Approvals to design and construct the Building on the Property in accordance with the Redevelopment Plan, the Concept Plans and Applicable Law.

**Section 2.3 The Property.** The Property consists of those lands and any improvements thereon described in the Recitals of this Agreement, as confirmed and described in the survey required by Section 2.5, and the Vacated Area.

(a) Title to the Property is not presently vested in either the Redeveloper or the City. The Redeveloper agrees to use its best efforts to acquire the Property in the name of "Bayfront Preservation Foundation, LLC" or a single purpose entity and/or entities controlling, controlled by or under common control of Thomas Gill within 180 Days of the Effective Date. The Redeveloper agrees to provide the City with a copy of the purchase contract entered into by the Redeveloper to acquire the Property within 15 Days of executing same. The Redeveloper further agrees to provide the City with a copy of the duly recorded deed for the Property within 15 Days of receipt of same. Notwithstanding anything to the contrary in this Agreement, if the Redeveloper is unable to acquire title to the Property as contemplated in this Section 2.3, then this Agreement shall immediately terminate and be of no force and effect, and the parties shall have no further obligations hereunder.

(b) Title to the Vacated Area is presently vested in the City. The Parties acknowledge that the Vacated Area is required to effectuate the Project as contemplated by the



Redevelopment Plan and this Agreement. Accordingly, upon the latter of (i) execution of this Agreement and (ii) acquisition of the Property by the Redeveloper as contemplated in Section 2.3(a), as evidenced by a copy of the duly recorded deed for the Property, the City agrees to take all steps reasonably necessary to vacate the Vacated Area, and to transfer all rights, title, and interest to the Redeveloper by such legal instrument as will vest title in the Redeveloper, and otherwise in accordance with and to the extent permitted under Applicable Law.

**Section 2.4 Governmental Approvals.** The Redeveloper shall diligently pursue all Governmental Applications to secure all Governmental Approvals required under Applicable Law. The City shall reasonably cooperate with the Redeveloper as necessary to effectuate this Section 2.4.

**Section 2.5 Survey.** Redeveloper agrees to order surveys and property descriptions of the Property prior to execution of this Agreement from a licensed or registered surveyor. Upon receiving the completed surveys and property descriptions, Redeveloper shall timely furnish the City with a copy thereof. The description of the Property shall be verified by such surveys which shall conclusively establish the metes and bounds description of the Property. All costs in connection with the surveys and property descriptions for the Property shall be borne solely by the Redeveloper.

**Section 2.6 Work to be Performed by Redeveloper.** The Redeveloper at its sole expense shall perform all Work as may be required in connection with the Project.

**Section 2.7 Commencement and Completion Schedule.** The Redeveloper agrees to Commence Construction and diligently prosecute the Project Improvements to Completion in accordance with the Construction Schedule. The Redeveloper understands that the City will require the Redeveloper to comply with the Construction Schedule deadlines and time periods for the various activities and actions to be taken by the Redeveloper as set forth therein with respect to the Project Improvements, subject to relief resulting from (a) mutually agreed upon extensions to the Construction Schedule by the Redeveloper and the City; (b) the occurrence of a Force Majeure Event; and (c) an Event of Default by the City that has a material adverse effect on the ability of Redeveloper to adhere to the Construction Schedule.

**Section 2.8 Progress Reports.** Beginning on the Effective Date and ending on the Termination Date, the Redeveloper shall make reports to the City on a monthly basis and at such other times as may reasonably be requested by the City, as to the actual progress of the Redeveloper with respect to construction of the Project Improvements, and such other matters as the City shall reasonably request be addressed in such reports.

**Section 2.9 Progress Meetings.** Upon reasonable advance written notice by the City, Redeveloper agrees to attend and participate in progress meetings quarterly with authorized representatives of the City to report on the status of the Project and to review the progress under the Construction Schedule. The meetings shall be held at the City's Municipal Building or other convenient location in the City. Prior to the meeting, subject to the terms of Section 2.10 below, representatives of the City may visit the Rehabilitation Area to inspect the progress of the work on the Project. The Redeveloper shall prepare the agenda for the quarterly progress meeting in

advance of the meeting (which shall include, *inter alia*, any agenda items reasonably requested by the City) and shall provide information to the City at the meetings regarding the Project progress including but not limited to property acquisition, Governmental Application submissions, Governmental Approval receipts, financial commitments, construction of the Project Improvements, and compliance with the Redevelopment Plan, if applicable. At the meeting, this information will be evaluated by the City to determine compliance with the terms and conditions of this Agreement and the Construction Schedule.

**Section 2.10 Access to Rehabilitation Area.** Upon reasonable advance written notice specifying a legitimate purpose (except for City construction code officials performing their duties in the ordinary course, who shall not be obligated to provide advance written notice specifying a legitimate purpose) the City and its authorized representatives shall have the right to enter the Rehabilitation Area to inspect the site and any and all work in progress for the purpose of furthering its interest in this Agreement. Such entrance shall be for informational purposes and shall not relieve the Redeveloper or the City of their respective obligations to implement the Project in accordance with this Agreement. In no event shall the City's inspection of the Project be deemed acceptance of the Work or be deemed to waive any right the City has under this Agreement. Any such entry shall be subject to reasonable restrictions by Redeveloper typical of an active construction site and any entry by City authorized representatives shall be at their own risk. The City hereby indemnifies, protects and holds the Redeveloper harmless from and against any and all liability, loss, costs, damages, claims, judgments or expenses, arising or alleged to arise from or in connection with the exercise of such right of entry and access; provided that such losses are not the result of any willful misconduct of the Redeveloper or its agents.

**Section 2.11 Public Improvements and Utility Relocation.** Notwithstanding anything in this Agreement to the contrary, the Redeveloper shall not be required to undertake any Public Improvements. The Redeveloper agrees to make any required improvements required under Governmental Approvals in accordance with Applicable Law. To the extent the City determines to undertake any road construction or reconstruction adjacent to the Property, the City agrees to cooperate with the Redeveloper in coordinating design requirements and construction and installations schedules.

**Section 2.12 Approval of Project Concept.** Subject to review and approval of site and/or subdivision plans by the Planning Board, the City approves of the Concept Plans. Any material modifications to the Concept Plans will require approval of the City and the Redeveloper. Furthermore, the Redeveloper acknowledges that it will be required to submit more detailed site and/or subdivision plans for review and approval by the Planning Board in accordance with Applicable Law and to comply with the provisions of such approval.

**[End of Article 2]**

## ARTICLE 3.

### ENVIRONMENTAL

**Section 3.1 Environmental Obligations.** (a) The Redeveloper agrees to comply with, and specifically assumes any and all responsibility at its sole cost and expense (except when other party(s) are obligated pursuant to Environmental Laws for Remediation of all or part of the Rehabilitation Area, or where Redeveloper agrees by contract with another party that such other party shall assume some or all such responsibility at its cost and expense), for Remediation of the Rehabilitation Area, all as may be required to complete its obligations under this Agreement. The City agrees to cooperate with Redeveloper's efforts to obtain any necessary Governmental Approvals from the NJDEP, and, subject to reimbursement by Redeveloper of the City's reasonable out-of-pocket expenses, the City shall assist Redeveloper in applying for and obtaining any grants or loans that may facilitate environmental investigation or Remediation efforts. It is understood and agreed that Redeveloper may utilize any Remediation method acceptable to the NJDEP.

(b) As of the Effective Date of this Agreement, it is understood that the Redeveloper is not the responsible party for Remediation of the Rehabilitation Area and any remediation is being conducted by or on behalf of the legally responsible party(s).

(c) Notwithstanding anything contained in this Agreement to the contrary, the City shall not provide funds in excess of the City Remediation Amount from the City Financing Amount to fund the Remediation of all of the Rehabilitation Area. Any cost of Remediation in excess of such City Remediation Amount shall be borne solely by Redeveloper from other funds.

**Section 3.2 Redeveloper Environmental Compliance.** The Redeveloper agrees that Redeveloper and its affiliates, representatives, agents, employees, lessees, contractors and others performing work for or on behalf of the Redeveloper (collectively, "Redeveloper Parties") shall not, except as reasonably required in connection with the Remediation or the construction and operation of the Project, except for the storage of fuel and substances related to the operations of public fuel docks for boats and like motorized water activities, including use, store, dispose of, generate, discharge, release or handle Hazardous Substances on or about the Rehabilitation Area, and that all activities performed by the Redeveloper Parties in the Rehabilitation Area shall be performed in compliance with applicable Environmental Laws.

**Section 3.3 Environmental Information.** The Redeveloper agrees to provide to the City within 15 Days of receipt, true and complete copies of all environmental reports, test results or other documents received by the Redeveloper or sent to the NJDEP or any other governmental agency with regard to the presence of Hazardous Substances or contamination of the Rehabilitation Area, all such reports and documents to be delivered without representation or warranty.

**Section 3.4 Survival.** The provisions of this Article 3 shall terminate if this Agreement is terminated; however, in the event that the Redeveloper acquires title to the

Property and the Vacated Area, then no such termination shall relieve the Redeveloper (except where other party(s) are obligated pursuant to Environmental Laws for Remediation of all or part of the Rehabilitation Area, or where Redeveloper agrees by contract with another party that such other party shall assume some or all such responsibility at its cost and expense) of any Remediation obligations it may have pursuant to Applicable Law.

**[End of Article 3]**

## ARTICLE 4.

### REDEVELOPER'S FINANCIAL OBLIGATIONS; OBLIGATIONS OF GUARANTORS

**Section 4.1 Redeveloper's Equity.** Redeveloper represents that it will use commercially reasonable efforts to obtain and commit equity and debt financing sufficient to complete the Project Improvements. Redeveloper expressly acknowledges and agrees that Redeveloper is solely responsible to provide financing sufficient to complete the Project Improvements and the City Financed Improvements in excess of the City Financing Amount. The City shall not provide financing of any type or amount for the cost to complete the Project Improvements, or for the cost to complete the City Financed Improvements in excess of the City Financing Amount.

**Section 4.2 Escrow Account.** Upon execution of this Agreement, Redeveloper shall establish an escrow account (the "Escrow Account") with the City's chief financial officer, with an initial minimum balance of \$20,000 for the payment of permissible City Costs. If, when and as often as may occur that the Escrow Account is drawn down to \$5,000, the Redeveloper, upon the City's written request, shall within 15 Days thereafter, provide to the City for deposit in the Escrow Account funds sufficient to replenish the Escrow Account to the amount of \$20,000 for use in accordance with these terms, unless such time period shall be extended by the City in its sole and absolute discretion. Funds in the Escrow Account will be applied to the payment or reimbursement of the City Costs and shall be disbursed from the Escrow Account by the City's chief financial officer. At least 15 Days prior to making any disbursement from the Escrow Account, the City's chief financial officer shall mail written notice of the proposed disbursement to the Redeveloper and the Guarantors, setting forth: (a) the amount of the disbursement; (b) the name of the person, company or entity designated to receive payment; and (c) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Agreement. Any dispute concerning payment of the City Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the Certificate of Completion for the Project Improvements, or upon termination of this Agreement, any money remaining in the Escrow Account shall be disbursed to the Redeveloper, except that the City may retain for not more than 60 Days after the issuance of the Certificate of Completion or the Termination Date, an amount sufficient to cover permissible unpaid City Costs.

**Section 4.3 Obligation of Guarantors.** (a) The financial obligations of the Redeveloper for the Project Improvements are hereby personally guaranteed by the Guarantors, who shall execute the Guaranty simultaneous with execution of this Agreement. Within 10 Days of the Effective Date and the execution of the Confidentiality Agreement (defined in Section 4.3(c)), and annually thereafter, the Guarantors shall provide to the designated City representative an affidavit ("Guarantors' Affidavit") representing that Guarantors have a minimum aggregate net worth in the amount of not less than one and one half (1.5) times the total outstanding debt and liabilities of the Guarantors, inclusive of the outstanding City Notes. For purposes of this paragraph, "net worth" shall include only those moneys, accounts and assets of the Guarantors against which a judgment creditor is lawfully entitled to execute. The Guarantor's Affidavit shall be endorsed as to its accuracy by an accountant selected by the Redeveloper. Simultaneous with delivery by the Guarantors of each Guarantor's Affidavit to the

City, the Guarantors shall deliver such Guarantor's Affidavit, together with all supporting financial documentation supporting such Guarantor's Affidavit to an accountant selected by the City, for further and final verification as to accuracy, provided that such accountant agrees in writing to the terms of the Confidentiality Agreement as defined below in Section 4.3(b). If such accountant to the City does not provide Guarantors with written objection to the accuracy of such Guarantor's Affidavit within 8 Days of receipt of same, such Guarantor's Affidavit shall be deemed approved and accepted by the City.

(b) The parties agree that the personal and financial information of the Guarantors required under this Section 4.3 is private confidential information and shall be the subject of a separate and mutually agreeable confidentiality agreement by and between the parties (the "Confidentiality Agreement") executed prior to or no later than the Effective Date. Notwithstanding anything in this Agreement to the contrary, in the event of the termination of this Agreement for any reason, the confidentiality of the Guarantors' personal and financial information shall remain in effect in accordance with the terms and conditions of the Confidentiality Agreement.

**[End of Article 4]**

## ARTICLE 5.

### SHORT-TERM FINANCING OF PORTION OF PROJECT BY THE CITY

**Section 5.1 City Financing.** The City agrees, subject to the Redeveloper's satisfaction of certain conditions precedent set forth herein, to provide short-term financing in an amount not to exceed the City Financing Amount for the City Financed Improvements. The City's obligation to provide the City Financing Amount is wholly conditioned on the City's ability to successfully authorize and issue the Initial Bond Anticipation Note. The City shall not be obligated to provide the City Financing Amount from any source of City funds other than from the sale and issuance of the Initial Bond Anticipation Note. The Redeveloper shall deliver to the City a written request for the City Financing Amount at least 60 Days prior to the Initial Issue Date. Upon receipt of such request from the Redeveloper, assuming no Redeveloper Default has occurred and is continuing, and not later than the Initial Issue Date, the City shall issue one or more bond anticipation notes in an amount not to exceed the City Financing Amount (the "Initial Bond Anticipation Note"). Such Initial Bond Anticipation Note shall be issued for a term of not to exceed one year, shall be issued on a federally taxable or tax-exempt basis, as determined by Bond Counsel, shall be sold on a competitive or negotiated basis as determined by the City in its sole and absolute discretion, shall bear interest at the interest rate set forth by the purchaser and shall contain such other terms and conditions as permitted by the Local Bond Law. Within 90 Days of the maturity date of the Initial Bond Anticipation Note, and assuming no Redeveloper Default has occurred and is continuing, the City agrees to issue one or more bond anticipation notes, the proceeds of which will be used to currently refund the Initial Bond Anticipation Note and each successive bond anticipation note, as applicable (each such bond anticipation note issued or renewed from time to time, a "Refunding Bond Anticipation Note"). Each Refunding Bond Anticipation Note shall be issued in an amount equal to the par amount of the prior City Note less the Principal Payment (or such higher principal reduction payment as determined by the Redeveloper and communicated to the City at least 30 Days prior to the maturity date of such maturing City Note) and shall be sold on the same terms and conditions as the Initial Bond Anticipation Note. No Refunding Bond Anticipation Note shall be issued beyond the sixth anniversary date of the Initial Issue Date (the "Last Bond Anticipation Note"). The City reserves the right to issue the Initial Bond Anticipation Note or any Refunding Bond Anticipation Note together with bond anticipation notes of the City issued to finance other public projects in the ordinary course of business.

**Section 5.2 Redeveloper Payment Terms.** Except as set forth in the next sentence of this Section 5.2, the Redeveloper agrees to pay to the City by wire transfer at least 10 Days prior to the maturity date of any City Note (i) the interest due on such City Note in the amount set forth in the City Payment Instructions and (ii) the respective Principal Payment due on such City Note, pursuant to the wiring instructions set forth in the City Payment Instructions. Redeveloper agrees to pay to the City by wire transfer at least 30 Days prior to the maturity date of the Last Refunding Bond Anticipation Note (i) the interest due on such Last Refunding Bond Anticipation Note in the amount set forth in the City Payment Instructions and (ii) the Principal Payment due on such Last Refunding Bond Anticipation Note, pursuant to the wiring instructions set forth in the City Payment Instructions. Redeveloper may at any time on any Day, including upon procurement of financing obtained in accordance with Article 12 in an amount

sufficient to pay the outstanding City Note, pay to the City an amount equal to (i) the par amount of the then outstanding City Note, or less than the par amount of the then outstanding City Note but more than the then applicable Principal Payment, plus (ii) the interest due on such City Note upon its maturity date.

**Section 5.3 [RESERVED].**

**Section 5.4 Security for the City Notes.** (a) Prior to the issuance by the City of the Initial Bond Anticipation Note, the Redeveloper shall provide to the City each of the following:

(i) A title insurance policy insuring title to the Property free and clear of all liens, in the name of the City as lender in the amount of City Note;

(ii) An executed guaranteed maximum price contract for the Remediation of the Property, subject to the terms thereof and in substantially the form attached hereto as **Exhibit I** (the "Remediation Contract"), notwithstanding anything to the contrary in this Agreement, with any material changes to such form being provided to the City for approval prior to the execution thereof in an amount sufficient to provide for the Remediation of the Property. Redeveloper hereby conditionally assigns the Remediation Contract to the City such that, upon an Event of Default, the City may exercise in the name and right of the Redeveloper, or in the name and right of the City as assignee hereunder, all rights and remedies of the Redeveloper under the Remediation Contract. Notwithstanding any legal presumption to the contrary, the City shall not be obligated by reason of its acceptance of assignment to perform any obligation of Redeveloper under the Remediation Contract. Neither this assignment nor enforcement of the Remediation Contract by the City is intended, nor shall it be construed, to operate to place responsibility upon the City for performance under the Remediation Contract. Redeveloper acknowledges that although the City is not legally obligated by reason of this assignment to perform any of Redeveloper's obligations under the Remediation Contract, the City may, in its sole discretion, cure Redeveloper's defaults under the Remediation Contract and otherwise maintain the Remediation Contract as a result of an Event of Default under this Agreement. In the event of any change in the guaranteed maximum price for work performed pursuant to the Remediation Contract, or any other material change to such Remediation Contract, then such change shall be provided to the City for approval, which approval, so long as no Event of Default has occurred and is continuing, shall not be unreasonably withheld;

(iii) A representation of the Guarantors that there is no event of default under the Guaranty and that the Guaranty is in full force and effect; and

(iv) A Redeveloper Note and a City Mortgage, which Redeveloper Note and City Mortgage will, at issuance, constitute a first lien on the Property.

(b) The execution by the Redeveloper of the Redeveloper Note and City Mortgage will, at issuance, constitute a first lien on the Property. In accordance with Article 12, the Redeveloper represents that it will use commercially reasonable efforts to obtain and commit equity and debt financing sufficient to complete the Project Improvements and the Building, including the City Financing Amount.



(i) To the extent that the Redeveloper cannot obtain financing in an amount sufficient to pay for the costs of the Project Improvements inclusive of the City Financing Amount prior to the Redeveloper exercising the Release Option (defined in Section 5.4(c) below), then upon issuance by the Redeveloper Mortgage Bank of a mortgage (the "First Mortgage") on Parcel 1, the City shall subordinate that portion of the Redeveloper Note and City Mortgage applicable to Parcel 1, and so long as any City Notes are outstanding, the Redeveloper Note and City Mortgage shall remain a second lien on Parcel 1.

(ii) The Redeveloper covenants that it shall not increase or amend the First Mortgage without the prior written consent of the City, which consent shall not be unreasonably withheld. Upon the repayment, satisfaction and discharge of the First Mortgage, the City Mortgage shall be the primary and sole lien against Parcel 1, unless the Redeveloper has exercised the Release Option contemplated under Section 5.4(c) or otherwise agreed to by the parties.

(c) The Parties acknowledge that the Property will be subdivided into at least two (2) separate parcels: parcel 1 shall include Block 911, Lots 1, 1.01 and 1.02, and the Vacated Area ("Parcel 1"), and the remainder parcel shall include Block 911, Lots 2, 2.01, 3, 3.01, 4 and 4.01 ("Remainder Parcel"). Any further subdivisions of the Property other than the subdivision specifically contemplated by this subsection (c) shall be subject to Applicable Laws and Governmental Approvals. Upon the issuance of the Certificate of Completion or, if earlier, upon the mutual agreement by the Parties, the Redeveloper agrees to pay the City the amount of \$456,975.00 for Parcel 1, which payment shall be used by the City to reduce the principal of the outstanding City Note upon its next maturity, and in exchange for such payment, the City agrees to a release of the City Mortgage as to Parcel 1, and a release of Parcel 1 from the Rehabilitation Area and all terms and conditions of this Agreement (the "Release Option"). At such time, the Redeveloper shall be entitled to proceed with the development of the Building and Parcel 1 in the normal course, and in accordance with Redevelopment Plan and Applicable Law. The City Mortgage shall remain in full force and effect against the Remainder Parcel and any improvements thereon.

**Section 5.5 Disbursement of City Note Proceeds.** From time to time, the Redeveloper may submit written vouchers detailing actual expenditures for the City Financed Improvements, together with a statement from the Redeveloper that such expenditures are for City Financed Improvements. The City shall have 10 Days to review such Redeveloper expense submission and, if necessary, request any additional information reasonably required by the City. So long as no Event of Default has occurred and is continuing, the City will within the latter of 20 Days of receipt of the Redeveloper expense submission if no additional information is required by the City or 10 Days of receipt by the City of all additional information requested by the City, disburse Initial Bond Anticipation Note proceeds to the Redeveloper in the amount indicated in such written voucher.

**[End of Article 5]**

## ARTICLE 6.

### REPRESENTATIONS AND WARRANTIES

**Section 6.1 Representations and Warranties of the Redeveloper.** The Redeveloper hereby represents and warrants to, and covenants with the City that as of the Effective Date:

(i) Redeveloper is a New Jersey limited liability company, duly formed and validly existing under the laws of the State, licensed to do business in the State and all necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

(ii) Redeveloper, and/or its single purpose designee(s), has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan. Copies of the Certificate of Formation and the Operating Agreement of the Redeveloper, and/or its single purpose designee(s), are attached hereto as Exhibit D and Exhibit E, respectively.

(iii) No receiver, liquidator, custodian or trustee of Redeveloper or of the Guarantors shall have been appointed as of the Effective Date, and no petition to reorganize Redeveloper pursuant to the Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date;

(iv) No adjudication of bankruptcy of the Redeveloper or the Guarantors or a filing for voluntary bankruptcy by the Redeveloper or the Guarantors under the provisions of the Bankruptcy Code or any other similar statute that is applicable to the Redeveloper or the Guarantors shall have been filed;

(v) No indictment has been returned against any official of the Redeveloper or the Guarantors with respect to any transaction related to the transactions contemplated by the terms of this Agreement;

(vi) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the authority of the Redeveloper or the Guarantors to enter into this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's or the Guarantors' property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement;

(vii) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party;

(viii) Guarantors' execution and delivery of the Guaranty and its performance hereunder and thereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of the Guarantors or of any agreement, mortgage, indenture, instrument or judgment, to which the Guarantors are a party;

(ix) All information and statements including information indicating Redeveloper's financial capability, included in any information submitted to the City and its agents, were true and accurate at the time of submission and to the extent that such information received is relevant to the Project, are true and correct in all material respects. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the City to enter into this Agreement;

(x) Redeveloper agrees that, except for the short-term financing of the City Financing Amount, the cost and financing of the Project is the responsibility of Redeveloper pursuant to the Redevelopment Plan and this Agreement;

(xi) Redeveloper is fully experienced, properly qualified and financially and technically capable to undertake the responsibilities and perform the development, design, financing, construction, operation and maintenance of the Project; and,

(xii) Redeveloper acknowledges that all uses to which the Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Law and this Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Law and this Agreement.

**Section 6.2 Representations and Warranties of the City.** The City hereby represents and warrants to, and covenants with, the Redeveloper that:

(i) The Redevelopment Plan has been duly adopted in compliance with all Applicable Law and is currently in full force and effect;

(ii) The City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the City is or will be a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder;

(iii) All requisite action has been taken by the City and all requisite consents have been obtained in connection with the entering into this Agreement and the instruments and documents referenced herein to which the City is a party, and the consummation of the transaction contemplated hereby, are to the best of the City's knowledge and belief authorized by all Applicable Law. To the best knowledge of the City there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the City entering into or performing its obligations under this Agreement;

(iv) This Agreement is duly executed by the City, and is valid and legally binding upon the City and enforceable in accordance with its terms on the basis of Applicable Laws presently in effect and the execution and delivery hereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the City is a party;

(v) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the authority of the City to enter into this Agreement or any action or act taken or to be taken by the City pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the City's property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement. The City represents that there is no action, proceeding or investigation now pending nor any basis therefore known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the City pursuant to this Agreement;

(vi) The City agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Agreement, and to execute any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper with respect to the Governmental Approvals, provided that nothing contained in this Section 6.2 shall be deemed: (i) to constitute an approval of all or any portion of the Project for which Governmental Applications have been submitted or are required or approval of any Governmental Application seeking a financial incentive (ii) a waiver of the ability of the Planning Board, or any other governmental or administrative entity, from exercising its statutorily authorized responsibilities with respect to the Governmental Applications or Governmental Approvals; or (iii) to require the City to support any application which, in the sole and absolute discretion of the City, competes with another City supported application or proposal; and

(vii) The City agrees to take all steps reasonably necessary to vacate the Vacated Area, and to transfer all rights, title, and interest to the Redeveloper, in accordance with Applicable Law.

**Section 6.3 Mutual Representations.** Intentionally Deleted.

**Section 6.4 Disclaimer of Warranties.** EXCEPT AS PROVIDED OTHERWISE IN THIS AGREEMENT, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE WORK TO BE DONE IN CONNECTION WITH THIS PROJECT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING, USAGE OF TRADE, TRADE PRACTICE, OR PERFORMANCE.

[End of Article 6]

## ARTICLE 7.

### REDEVELOPER COVENANTS; DECLARATION OF COVENANTS AND RESTRICTIONS

**Section 7.1 Redeveloper Covenants.** The Redeveloper covenants and agrees as follows (collectively, the "Redeveloper Covenants"):

(i) The Redeveloper shall enter into such agreements with respect to the redevelopment, design, financing, construction, management and operation of the Project Improvements, as applicable, containing such provisions as may be required by Applicable Law and as required by and consistent with the intent of this Agreement;

(ii) In connection with its use or occupancy of the Project, the Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Rehabilitation Area or any building or structure erected or to be erected therein is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all Applicable Law prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status;

(iii) The Redeveloper shall comply with the applicable provisions and public purposes of the Act and all obligations under this Agreement and shall at all times develop, design, construct, operate and maintain the Project Improvements or cause the Project Improvements to be developed, designed, constructed, operated or maintained pursuant to the conditions and requirements of Applicable Law, Governmental Approvals, this Agreement and the Redevelopment Plan and shall construct no other use except that established in the Redevelopment Plan;

(iv) In order to effectuate the purposes of this Agreement, the Redeveloper shall make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the construction and development of the Project Improvements in accordance with this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Law;

(v) The Redeveloper shall use commercially reasonable efforts to diligently obtain all Governmental Approvals requisite to the construction and redevelopment of the Project Improvements, including evidence satisfactory to the City that the construction and redevelopment of the Project Improvements is in compliance with all Applicable Law;

(vi) Upon completion of the redevelopment and construction of the Project Improvements, the Redeveloper shall obtain any Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby;

(vii) The Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason,

including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project Improvements;

(viii) The Redeveloper shall diligently undertake the development and construction of the Project Improvements in accordance with Section 2.7;

(ix) The Redeveloper shall not encumber, hypothecate or otherwise use the Project Improvements, or any part thereof, as collateral for an unrelated transaction;

(x) Until a Certificate of Completion is issued for the Project Improvements and except as set forth in Article 11, the Redeveloper shall not sell, lease, convey or otherwise transfer all or any portion or any the Project Improvements (other than leases and/or sales to retail and residential users) without the written consent of the City;

(xi) The Redeveloper shall cause the Project Improvements to be redeveloped, designed, financed, constructed, operated and maintained, in accordance with Redevelopment Plan, Governmental Approvals, this Agreement and Applicable Law at its sole cost and expense, provided however, that Redeveloper shall not be deemed to be in breach of this covenant if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Law;

(xii) The Redeveloper shall keep and maintain in good condition the Project Improvements as required under the Governmental Approvals, including but not limited to any required landscaping;

(xiii) The Redeveloper shall construct the Project Improvements in a workmanlike manner, consistent with Article 10 and the Construction Schedule;

(xiv) The Redeveloper shall immediately notify the City of any material change in financial condition from the information provided to the City by the Redeveloper or Guarantors, impacting Redeveloper's financial capability to develop, design, finance, construct, operate, and maintain the Project Improvements, in furtherance of the City's consideration in designating Redeveloper as redeveloper of the Project; and

(xv) The Redeveloper shall make all payments in satisfaction of the Redeveloper's financial obligations as set forth in this Agreement, including but not limited to the City Costs and all payments due on the City Notes.

**Section 7.2 Declaration of Covenants and Restrictions.** The Redeveloper agrees for itself and its successors and assigns to record a Declaration of Covenants and Restrictions (the "Declaration"), with respect to all lands included in the Rehabilitation Area, imposing upon said lands, the Redeveloper Covenants. All provisions hereinafter with respect to the insertion in or the application of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

**Section 7.3 Effect and Duration of Redeveloper Covenants.** It is intended and agreed, and the Declaration shall so expressly provide, that the Redeveloper Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns and any successor in interest to the Rehabilitation Area or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project or any part thereof. After Completion of the City Financed Improvements, the Project shall cease to be governed by the terms of this Agreement and the Redeveloper Covenants, and a Certificate of Completion shall be issued by City and recorded on the records maintained by the Recorder of Deeds in the Office of the Cape May County Clerk.

**Section 7.4 Enforcement by City.** In amplification, and not in restriction of the provisions of this Article 7, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Article 7 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect. The City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

**Section 7.5 Rehabilitation Area Upon Completion.** Upon redevelopment of the Rehabilitation Area and Completion of the City Financed Improvements, the conditions that were found and determined to exist at the time the Rehabilitation Area was determined to be an area in need of rehabilitation shall be deemed to no longer exist and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.

**[End of Article 7]**

## ARTICLE 8.

### INSURANCE

**Section 8.1 Insurance - General Requirements.** At all times the Redeveloper shall maintain, or cause to be maintained, insurance for the mutual benefit of the City and Redeveloper as their interest may appear, insurance in the following forms and amounts:

(i) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in amounts sufficient to prevent the City or the Redeveloper from becoming a co-insurer within the terms of the applicable policies, and in any event, in amounts not less than 100% of the then full insurable value of the Project Improvements (Builder's Risk);

(ii) War risks, when and to the extent that such insurance is generally obtainable from the United States Government or an agency thereof, in an amount sufficient to prevent the City or the Redeveloper from becoming a co-insurer within the terms of the applicable policy, and, in any event, in an amount not less than 100% of the then full insurable value of the Project Improvements, or the amount that the United States Government or an agency thereof limits the insured to obtaining;

(iii) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may reasonably be required by the City from time to time, but not less than \$1 million per occurrence in respect of injury or death and \$2 million per occurrence for property damage, plus excess ("umbrella") liability policies with coverage of not less than \$10 million; and

(iv) Workers compensation insurance in an amount not less than \$1 million or such greater amount as may be required under Applicable Law of the State for employees of the Redeveloper and its contractors.

Redeveloper's obligation to provide insurance as to the Project Improvements shall cease upon the latter of (i) issuance of a Certificate of Completion or (ii) when there are no City Notes outstanding.

**Section 8.2 Restrictions as to Insurance.** All insurance provided for under this Agreement will be reasonably effected under valid enforceable policies issued by insurers rated "A+" or better by A.M. Best. Within 15 Days of the purchase of the Property by the Redeveloper, certificates procured by the Redeveloper pursuant to this Article 8 will be delivered to the City. At least 30 Days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redeveloper to the City as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this Article 8 will, to the extent then generally obtainable, contain agreements by the insurers that (a) such policies may not be canceled except upon 30 Days prior written notice by insurer to the City; (b) the policies are primary and noncontributing with any



insurance that may be carried by the City, (c) the City shall not be liable for any premiums or assessments.

**Section 8.3 City as an Additional Insured.** All such policies of insurance required in this Section 8 shall be endorsed to add the City as an additional insured and to provide that such coverage shall be primary and that any insurance maintained by the City shall be excess insurance only.

**Section 8.4 Additional Insurance.** Nothing in this Article 8 shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies provided for under Section 8.1(i) or Section 8.1(ii) under a blanket insurance policy or policies which can cover other properties as well as the Property; provided, however, that any such policy of insurance provided for under Section 8.1 must (a) specify therein, or the Redeveloper shall furnish the City with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project Improvements, which amount will not be less than the amount required by Section 8.1 to be carried, and (b) not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy.

**Section 8.5 Deductibles.** All insurance provided under this Article 8 may contain loss deductible clauses in such maximum amounts as reasonably satisfactory to the City.

**Section 8.6 Subrogation.** All insurance policies obtained pursuant to this Article 8 must include waivers of subrogation against the City and the Redeveloper.

**[End of Article 8]**

## ARTICLE 9.

### CONSTRUCTION SCHEDULE; CERTIFICATE OF COMPLETION AND OCCUPANCY

**Section 9.1 Construction Schedule.** Subject to the terms hereof, the Redeveloper shall construct or cause to be constructed the Project Improvements in accordance with the Construction Schedule. In the event that the Redeveloper is unable, for reasonable cause, to Commence Construction on the Project Improvements or to Commence or Complete performance of any of the milestones set forth on the Construction Schedule on or prior to the required date or deadline set forth on the Construction Schedule, the Redeveloper may give written notice to the City setting forth in reasonable detail the reasons for delay and requesting the City's approval of an extension of such date, which approval shall not be unreasonably withheld.

**Section 9.2 Certificate of Completion.** (a) The Completion of the City Financed Improvements shall be evidenced by a certificate (the "Certificate of Completion") in recordable form, issued by the City. The Certificate of Completion for the City Financed Improvements shall state that the City accepts the terms of a written certification of a duly authorized officer of the Redeveloper stating that the City Financed Improvements have been Completed in accordance with Government Approvals, the Redevelopment Plan, this Agreement and Applicable Law, and all labor, services, materials and supplies used in connection therewith have been paid for (or, if disputed, bonded for) and the Redeveloper has materially performed the following duties and obligations under this Agreement and in accordance with Applicable Law:

- (i) Demolition of structures as selected by the Redeveloper;
- (ii) Removal, repair, and or renovation of existing underground storage tanks and associated systems together with all required Remediation of the Property in accordance with all Government Approvals and Applicable Law.
- (iii) Design, installation, repair, renovation, rehabilitation, or replacement of all bulkheads, piers, docks, fueling stations and boat slips on the Property.
- (iv) Design and installation of the parking field.
- (v) Design and installation of landscaping.
- (vi) Design and installation of amenities necessary for the implementation of the Project Improvements and the Building.

(b) With respect to the Rehabilitation Area, the Certificate of Completion shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the Redeveloper's obligation to construct the City Financed Improvements. Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Rehabilitation Area was

determined to be an area in need of rehabilitation shall be deemed to no longer exist and the Declaration shall be released.

(c) If the City determines that the Redeveloper is not entitled to a Certificate of Completion, the City shall, at the written request of the Redeveloper, within 15 Days of receipt thereof, provide the Redeveloper with a written statement of the material reasons the City refused or failed to furnish a Certificate of Completion. Upon resolution of the open issues to the reasonable satisfaction of the City, the Redeveloper shall be entitled to receive the Certificate of Completion.

(d) In its discretion, Redeveloper may apply for a Certificate of Completion for a portion of the City Financed Improvements separately, provided nothing in this Article alters the time for Completion of Construction.

**Section 9.3 Certificates of Occupancy.** The City, in accordance with its ordinances and regulations then in effect, upon application of Redeveloper, shall issue Certificates of Occupancy from time to time, as applicable as may be necessary to enable Redeveloper to market, sell, transfer and convey title thereto and/or to lease same to third parties.

[End of Article 9]

## ARTICLE 10.

### GENERAL DEVELOPMENT REQUIREMENTS

**Section 10.1 Scope of Undertaking.** Except as otherwise provided in this Agreement, the services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, financing, construction and operation of the Project Improvements and each of the components thereof, including, without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project Improvements and each component thereof, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, (all of the foregoing undertakings and the work product thereof being referred to collectively in this Agreement as the "Work"), the administration, operation and management, or contracting for the administration, operation and management of the Project Improvements and all components of the Project Improvements and all aspects of the funding of the Project Improvements, including equity funding and construction, interim and permanent financing; all at the sole cost and liability of the Redeveloper.

**Section 10.2 Grants, Loans and Other Financing.** The Parties agree to cooperate and work in good faith with one another to assist in the financing of the Project. The City agrees to assist the Redeveloper in applying for and securing, to the extent not specifically defined above, any and all available grants, loans and other types of financing available from public entities at all levels of government to assist in the Project, subject to prior agreement between the City and the Redeveloper on payment by Redeveloper of the City's direct costs and expenses in connection with such City assistance. Any grant funds received for costs that are otherwise the responsibility of the Redeveloper shall result in a dollar for dollar reduction in the principal amount of the City Notes upon the first maturity date of such City Notes after receipt of such grant funds. Nothing herein shall be construed as obligating the City to assume any credit risk or guarantee or any other financial obligation other than as specifically outlined in Section 5.1. This Section 10.2 shall not apply to any grants required to be used for an improvement outside the scope of the Project or otherwise restricted by the terms of the grant.

**Section 10.3 Affordable Housing.** The Redeveloper is not required to provide any affordable housing units on the Property or as part of the Project. The Redeveloper agrees to comply with Applicable Laws in effect at the time the Redeveloper makes application for a construction permit for any structure or improvement that would be subject to a fee pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.

**Section 10.4 Performance and Maintenance Bonds.** The Redeveloper shall furnish a performance bond and a payment bond each in forms as specified by and required under the Municipal Land Use Law (collectively, the "Performance and Maintenance Bonds") as security for the performance of the obligations of the Redeveloper and its contractors and subcontractors under the contracts for the Project Improvements. In the event the Redeveloper is entitled to and fails to exercise its rights under the Performance and Maintenance Bonds and/or if there occurs a Redeveloper Default, then the City shall thereafter have the right to the protections and

guarantees available through and from the surety provided by the Performance and Maintenance Bonds in accordance with Applicable Law. The Performance and Maintenance Bonds shall name the Redeveloper and the City, as their respective interests may appear, as beneficiaries of the Performance and Maintenance Bonds and of all rights, payments and benefits flowing or deriving from the Performance and Maintenance Bonds. The Performance and Maintenance Bonds shall include coverage for any approved change orders to work material to Completion of the Project Improvements as permitted by Applicable Law, and the Redeveloper agrees that it will comply and cause its contractors to comply with all requirements set forth in the Performance and Maintenance Bonds in connection therewith. The cost of obtaining the Performance and Maintenance Bonds shall be borne by the Redeveloper or its contractors.

**Section 10.5 Traffic.** The Parties hereby acknowledge that the direction, flow and amount of traffic in and around the Rehabilitation Area during the time of construction are an issue to be addressed during the construction of the Project. The Redeveloper hereby agrees to obligate all contractors and subcontractors to use commercially reasonable efforts to minimize the traffic impacts on the surrounding area during this period of time.

**Section 10.6 Safety.** The Redeveloper shall take necessary precautions for the safety of its Persons on the Project, and shall comply with all Applicable Laws to prevent accidents or injury to persons in, on, about or adjacent to the Rehabilitation Area. The Redeveloper shall erect and properly maintain at all times, as required by the conditions and progress of the Work on the Project Improvements, necessary safeguards for the protection of workers and the public. Following Commencement of Construction of the Project Improvements, the Redeveloper shall, through the contractors and subcontractors, keep the Rehabilitation Area free from any unreasonable accumulation of debris or waste materials. Additionally, the City agrees that, to the extent it undertakes a way finding project for all or any portion of the City, the City shall include in such way finding project directional signage for the Project, in a form, number, location, size and content consistent with such way finding project. This provision shall remain in effect notwithstanding the issuance of a Certificate of Completion.

**Section 10.7 Cooperation.** The Parties shall fully cooperate with each other as necessary to effectuate the Project, including entering into additional agreements that may be reasonably required; provided, however, that such actions and/or agreements shall not result in a material increase or decrease in the City's and the Redeveloper's respective obligations hereunder.

**Section 10.8 Permit and Inspection Fees.** In addition to the Escrow Account established in Section 4.2, the Redeveloper shall establish an escrow account with the City and the Planning Board for the payment of all permit and inspection fees in accordance with the Municipal Land Use Law and Applicable Law.

**Section 10.9 Construction Traffic, Illumination, Noise and Pollution.** The Redeveloper shall take reasonable steps to minimize the construction traffic, the passage of excessive or unwarranted illumination, noise or pollution into the surrounding community. The Redeveloper commits to follow all applicable construction laws, regulations and standards in the industry to address these concerns and furthermore commits to having a program in place, prior

to the Commencement of Construction, to reasonably address such concerns. It is specifically agreed by the City that the Redeveloper will be allowed to perform any Work contemplated under this Agreement during normal working hours throughout the year, notwithstanding any City imposed-summer moratoriums.

**Section 10.10 Rodent, Insect and Animal Control.** The Redeveloper will take reasonable steps to minimize and control the migration of rodents, insects, or other animals from the Rehabilitation Area during the construction of the Project. The Redeveloper will undertake to provide controls in accordance with all Applicable Law and other construction standards such that the issue of rodent, insect and animal control is reasonably addressed. The Redeveloper shall coordinate this effort with the City's Department of Health.

**Section 10.11 Equal Employment Opportunity.** Redeveloper agrees that during construction of any City Financed Improvements as follows:

(i) Redeveloper will not discriminate against any employee of Redeveloper or applicant for employment because of race, color, religion, sex, or national origin. Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the City that are consistent therewith.

(ii) Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(iii) Redeveloper agrees to make good faith efforts to include qualified and certified minority enterprises as subcontractors for and suppliers to the City Financed Improvements.

(iv) The obligations contained in this Article shall be binding on all contractors and subcontractors to the extent that any work on the City Financed Improvements is done by any contractor or subcontractor, and any contract entered into by Redeveloper shall so provide. Redeveloper covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Article 10.

(v) Redeveloper and its contractors and subcontractors shall submit reports regarding their compliance with this Article 10 as the City may reasonably request in writing.

**[End of Article 10]**

## ARTICLE 11.

### PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

**Section 11.1 Prohibition Against Transfers of Interests in Redeveloper.** (a) The Redeveloper recognizes the importance of the Project Improvements to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the City in entering into this Agreement, particularly in view of the public aids that have been or will be made available for the purpose of making such redevelopment possible. The City considers that a transfer of the ownership in the Redeveloper, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership of or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, is for practical purposes a transfer or disposition of the Project Improvements then owned by the Redeveloper. The Redeveloper recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Redeveloper, and, in so doing, the City is relying on the obligations of the Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder.

(b) As a result, prior to completion of the Project Improvements as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the City, which approval shall not be unreasonably withheld, Redeveloper agrees for itself and any successor in interest that:

(1) there shall be no transfer by any owner of any equity interest in Redeveloper, or by any successor in interest to such owner, of any interest in Redeveloper;

(2) nor shall any such owner or successor in interest suffer any such transfer to be made, except due to death, but excluding transfers among existing members;

(3) nor shall such owner or successor in interest make, or suffer to be made, any other change in the ownership of any equity interest in Redeveloper except as hereinabove provided, or with respect to the identity of the parties in control of Redeveloper or the relative degrees of their control, by any other method or means, whether by increased capitalization, merger with another corporate, partnership or limited liability entity, or otherwise. With respect to this provision, Redeveloper and the party(ies) signing this Agreement on behalf of Redeveloper represent that each party has authority of all its owners to agree to this provision on their behalf and to bind them with respect thereto. For the purpose of this Agreement, the term "owners" is defined to include the general partners of a partnership, the stockholders of a corporation or the members of a limited liability company.

**Section 11.2 Exemption from Prohibited Transfers.** Notwithstanding anything contained in this Agreement to the contrary, the assignment by the Redeveloper of its rights under this Agreement shall not constitute a prohibited transfer for purposes of Article 11.1 under the following conditions: (i) the assignee of Redeveloper is an entity controlling, controlled by,

or under common control of Redeveloper including but not limited to an urban renewal entity formed by Redeveloper pursuant to N.J.S.A. 40A:20-4; (ii) the assignee of Redeveloper shall assume all of the obligations of Redeveloper hereunder, but Redeveloper shall remain primarily liable for the performance of Redeveloper's obligations, (iii) a copy of the fully executed written assignment and assumption agreement shall be promptly delivered to the City, and (iv) such assignment does not violate any of the Government Approvals.

**Section 11.3 Transfer of Agreement.** Except as provided in this Section 11, Redeveloper agrees for itself, its successors and assigns, that prior to the completion of the Project Improvements or any portion thereof, as evidenced by the issuance of a Certificate of Completion, it will not make or create, or suffer to be made or created, any sale, assignment, conveyance, lease or transfer in any other mode or form (collectively, the "Transfers") of its interests in the Property or any portion of the Project Improvements or its interest in this Agreement, without the prior written approval of the City.

**Section 11.4 Consent to Permitted Transfers.** Subject to the provisions of Article 12, the City hereby consents, without the necessity of further approvals from any entity, to the following Transfers: (i) a Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement with respect to Completion of the Project Improvements and any other purpose authorized by this Agreement, (ii) the City Mortgage as set forth in Article 5 of this Agreement and (iii) any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, and marketing of the Project Improvements. With respect to Subsections (i) and (iii) in this Section 11.4, Redeveloper shall provide to the City written notice of at least 15 Days prior to such Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such Transfers.

**Section 11.5 Prohibition Against Speculative Development.** Because of the importance of the redevelopment of the Property to the general welfare of the community, Redeveloper represents and agrees that its acquisition of the Property and the Redeveloper's undertakings pursuant to this Agreement are, and will be used, for the purpose of the redevelopment of the Property as provided herein, and not for speculation in land holding.

**Section 11.6 Information as to Ownership of Redeveloper.** In order to assist in the effectuation of the purposes of this Article 11, Redeveloper agrees that during the period between the execution of this Agreement and the Completion of the Project Improvements as evidenced by the issuance of a Certificate of Completion:

(i) Redeveloper will notify the City in writing of any and all changes whatsoever in the ownership of Redeveloper, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information; and,



(ii) Redeveloper shall, at such time or times as the City may reasonably request, furnish the City with a complete statement subscribed and sworn to by a managing member of Redeveloper, setting forth all of managing members, or other owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest.

**Section 11.7 Exclusions.** The parties recognize that Redeveloper may lease portions of the Property or Project Improvements in the ordinary course of its business on the Property. Notwithstanding anything contained in this Agreement to the contrary, such leasing and sales shall be excluded from any and all transfer prohibitions, and all recorded covenants and declarations shall expressly so state.

**[End of Article 11]**

## ARTICLE 12.

### MORTGAGE FINANCING

**Section 12.1 Notice with Respect to Mortgages.** Except as to financing conducted through recognized chartered banks and/or licensed insurance lenders or otherwise provided for herein, the Redeveloper shall provide the City with written notice in advance of any proposed financing secured by a mortgage or other similar lien instrument, which it proposes to enter into with respect to the Project Improvements, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Improvements, by involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same.

**Section 12.2 Obligations of Mortgagee.** Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (i) any other party who thereafter obtains title to the Property or such part from or through any such holder or (ii) any other purchaser at foreclosure sale (other than the holder of the mortgage itself)) shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; provided, that nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any project thereon, other than those uses provided or permitted under the Redevelopment Plan, Governmental Approvals, Applicable Law and this Agreement.

**Section 12.3 Notice of Default to Mortgagee and Right to Cure.** Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Agreement, the City shall at the same time deliver to each lender (or equity participant in Redeveloper) a copy of such notice or demand, provided that the Redeveloper has delivered to the City a written notice of the name and address of such lender and equity participant. Each such lender shall (insofar as the rights of the City are concerned) have the right at its option within 60 Days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default with respect to that portion of the Project which is being financed by such lender and which is subject to being cured and to add the cost thereof to the debt and the lien which it holds, or to the obligations of the lessees under any lease-back or of the guarantor under any other conveyance for financing.

**Section 12.4 Estoppel Certificate.** Within 30 Days following written request therefore by the Redeveloper, or of any lender, purchaser, tenant or other party having an interest in the Project, the City shall issue a signed estoppel certificate either stating this Agreement is in full force and effect and that there is no default or breach under this Agreement, or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than 3 estoppel certificates may be requested per year.

**[End of Article 12]**

## ARTICLE 13.

### EVENTS OF DEFAULT; REMEDIES

**Section 13.1 Events of Default.** Any one or more of the following shall constitute an "Event of Default" hereunder, subject only to Force Majeure Events and tolling as provided elsewhere in this Agreement:

(i) Failure of the Redeveloper to timely pay the principal of and interest due on any City Notes as and when due.

(ii) Failure of the Redeveloper or the City to observe and perform any material covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of 30 Days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such material covenant, condition or agreement is one which cannot be completely remedied within the 30 Days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable, but in no event later than 120 Days after such written notice, unless otherwise extended pursuant to the terms of this Agreement.

(iii) (a) The Redeveloper or the Guarantors shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (b) a custodian shall have been legally appointed with or without consent of the Redeveloper; (c) Redeveloper or the Guarantors, (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (d) the Redeveloper or the Guarantors has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (e) the Redeveloper or the Guarantors shall take any action for the purpose of effecting any of the foregoing; (f) a petition in bankruptcy shall have been filed against the Redeveloper or the Guarantors, and shall not have been dismissed for a period of 90 consecutive Days; (g) an Order for Relief shall have been entered with respect to or for the benefit of the Redeveloper or the Guarantors, under the Bankruptcy Code; (h) an Order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper or the Guarantors, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of 90 Days; (i) the Redeveloper shall have suspended the transaction of its usual business.

(iv) The Redeveloper shall default in or violate its obligations with respect to the design, development and construction of the Project Improvements in accordance with this Agreement, the Redevelopment Plan, the Construction Schedule, Governmental Approvals or Applicable Law including but not limited to failure to comply with the Commencement of Construction and Completion of Construction dates, shall abandon or substantially suspend construction work (unless such suspension arises out of a delay set forth in Article 15 hereof),

and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within 90 Days after written demand by the City to do so, unless otherwise extended pursuant to the terms of this Agreement.

(v) The Project Improvements shall not be complete, as evidenced by a Certificate of Completion, on the Completion Date, which date is subject to extension as provided in this Agreement, or by mutual, written agreement of the Parties consistent with this Agreement.

(vi) Upon transfer of title to the Property, Redeveloper, its successor or assigns shall fail to pay any real estate taxes, assessment on the Property or any part thereof when due, shall fail to pay any payments required under this Agreement, or shall place on the Property any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within 90 Days after written demand by the City to do so. Notwithstanding anything to the contrary contain herein, the Redeveloper shall have the right to contest the real estate tax assessments on the Property in accordance with Applicable Law.

(vii) There is, in material breach of this Agreement, a transfer or assignment as prohibited in Article 11.

(viii) There is an event of default by Redeveloper under the Remediation Contract.

**Section 13.2 Remedies of City Upon Event of Default.** Whenever any Event of Default of Redeveloper shall have occurred and after any cure period remains uncured, the City may terminate this Agreement or take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of Redeveloper under this Agreement. Performance by the Redeveloper of its obligations under this Agreement are of the essence and, accordingly, the City may, in addition to the remedies set forth herein, seek specific performance of the obligations herein.

**Section 13.3 Use of Documents.** Subject to the terms of the Confidentiality Agreement, the Redeveloper hereby agrees that the City may use all documents prepared and filed by Redeveloper in support of the Project, including but not limited to the Governmental Applications, to complete the Project following an Event of Default, without cost to or liability of the City. Notwithstanding the foregoing, the City acknowledges that third party rights to documents prepared for the Redeveloper are not affected.

**Section 13.4 Failure to Commence or Complete Construction of the Project Improvements.** (a) In addition to other remedies available to the City, including but not limited to the remedies set forth in Section 13.2, the City may terminate this Agreement if the Redeveloper does not Commence Construction of the Project Improvements in accordance with the time periods set forth in the Construction Schedule, unless otherwise extended pursuant to the terms of this Agreement. Redeveloper's designation as Redeveloper and right to pursue

development of the Project Improvements may be terminated after notice and cure period, as provided herein. Termination of Redeveloper's right to develop the Project Improvements is in addition to any other remedies available to the City for breach or default under this Agreement, including but not limited to the City's right to recover the City Costs.

(b) If any dispute shall arise regarding whether the Redeveloper has performed in a timely and satisfactory manner in connection with the Project, the parties will resolve any dispute consistent with the terms and conditions set forth in of this Agreement.

(c) The time for Commencement or Completion of the Project shall automatically be extended for a period of time equal to any delay in Commencement or Completion of the Project due to the occurrence of a Force Majeure Event.

**Section 13.5 Restoration of Status.** In case the City or Redeveloper, as applicable, shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the City or Redeveloper, as applicable, then and in every such case, Redeveloper and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Redeveloper and the City shall continue as though no such proceedings had been taken.

**Section 13.6 Failure or Delay by Either Party.** Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 13.7 Remedies Cumulative.** No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

**[End of Article 13]**

## **ARTICLE 14**

### **INDEMNITY**

**Section 14.1 Obligation to Indemnify.** Each Party (the "Indemnifying Party") agrees to indemnify and hold the other Party and its directors, officers, agents, servants, employees and consultants (collectively, the "Indemnified Parties", which term shall not include any person who might claim indemnification by virtue of being a lessee of the Indemnified Party) harmless from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable and customary attorneys' fees and expenses and experts' fees and expenses) (collectively, "Claims") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the implementation, construction or maintenance of the Project, or any activities of or on behalf of the Indemnifying Party within the Rehabilitation Area, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of any Indemnified Party. The Indemnified Party shall provide notice to the Indemnifying Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within 15 Days of the Indemnified Party receiving actual or constructive notice of the subject Claims, provided, however, that in the event such notice is not timely received, the Indemnifying Party shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

**[End of Article 14]**

## ARTICLE 15.

### DELAYS

**Section 15.1 Force Majeure.** For the purposes of any of the provisions of this Agreement, neither the City nor the Redeveloper, as the case may be, nor any successor in interest of either Party, shall be considered in breach of, or in default with respect to its obligations hereunder because of any delay in the performance of such obligations arising from the following acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Agreement ("Force Majeure Event"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above (such events being required to physically affect a party's ability to fulfill its obligations hereunder; the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure Event);

(b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either party hereto;

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than City when acting in conformance with this Agreement) with jurisdiction within the City, excepting decisions interpreting federal, state and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the party to this Agreement relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party. Delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be a Force Majeure Event;



(e) Strikes or similar labor action by equipment manufacturers, suppliers of material and/or transporters of same;

(f) An appeal of a Governmental Approval by a third party therefrom until such appeal has been disposed of to the reasonable satisfaction of the Redeveloper without the right to further appeal or, if there is a right to further appeal, the time period therefor has expired without a further appeal having been taken; and

(g) Acts or omissions of the other party, except in conformance with this Agreement.

**Section 15.2** The parties hereto acknowledge that the acts, events or conditions set forth in Paragraphs (a) through (f) above are intended to be the only acts, events or conditions that may (upon satisfaction of the conditions specified above) constitute a Force Majeure Event. In the event of the occurrence of any such Force Majeure Event, the time or times for performance of the obligations of the City or the Redeveloper shall be extended commensurate with the period of the delay. Notice by the party claiming such extension shall be sent to the other party within 30 Days of the commencement of the cause. During any Force Majeure Event that affects only part of the Project, the Redeveloper shall continue to perform its obligations for the rest of the Project. The existence of a Force Majeure Event shall not prevent a party from declaring the occurrence of any Event of Default by the party relying on such Force Majeure Event provided that the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

**[End of Article 15]**

## ARTICLE 16

### NOTICES AND DEMANDS

**Section 16.1 Notices.** A notice, demand or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number) or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or facsimile numbers:

If to the City, to:

City of Ocean City  
861 Asbury Avenue  
Ocean City, New Jersey 08226  
Attn: City Clerk  
Fax:

with a copy to:

City of Ocean City  
861 Asbury Avenue  
Ocean City, New Jersey 08226  
Attn: City Administrator  
Fax:

Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
Roseland, New Jersey 07068  
Fax: (973) 712-1431

If to the Redeveloper, to:

Bayfront Preservation Foundation, LLC (or its designee(s))  
6825 Tilton Road  
Building C  
Egg Harbor Township, New Jersey 08234  
Fax: (609) 788-3916

with copy to:

Stephen R. Nehmad, Esq.  
Nehmad, Perillo & Davis, P.C.

4030 Ocean Heights Avenue  
Egg Harbor Township, NJ 08234  
Fax: (609) 926-9721

If to the Guarantors, to:

Thomas Gill  
945 Palen Avenue  
Ocean City, NJ 08226  
Fax: (609) 788-3916

and

Beverley Gill  
945 Palen Avenue  
Ocean City, NJ 08226  
Fax: (609) 788-3916

with copy to:

Stephen R. Nehmad, Esq.  
Nehmad, Perillo & Davis, P.C.  
4030 Ocean Heights Avenue  
Egg Harbor Township, NJ 08234  
Fax: (609) 926-9721

The Parties agree that any notice, demand or other communication under this Agreement given or delivered to the Redeveloper, or its successors and assigns, shall be simultaneously be given or delivered to the Guarantors.

Either Party may from time to time, by written notice given to the other pursuant to the terms of this Section 16.1, change the address, facsimile number or persons to which notices shall be sent.

**[End of Article 16]**