

RESOLUTION 212-07

**RESOLUTION AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT FOR HOTEL CAMPUS WITH OCEAN PLACE DEVELOPMENT, LLC**

**WHEREAS**, Ocean Place Development, LLC (“Redeveloper”) owns property located within the Hotel Campus Sector of the Ocean Front Redevelopment Area; and

**WHEREAS**, Redeveloper was assigned all rights, interests and obligations under a Disposition and Development Agreement between the Mayor and Council of the City of Long Branch, New Jersey and GEM Holding Company, Inc., entered in 1985 (the “Original Development Agreement”); and

**WHEREAS**, the Original Development Agreement provided the developer with the option of purchasing certain properties along Abbottsford Avenue, more specifically identified as Block 294, Lots 1-15 and Block 293, Lots 1, 2, 4, 5, 6,7, 8 and 9 (the “Abbottsford Avenue Properties”); and

**WHEREAS**, The Original Development Agreement provided the developer with the right to construct a second tower on the Hotel; and

**WHEREAS**, Redeveloper wishes to pursue redevelopment of the Hotel Campus and has submitted proposals for such redevelopment to the City; and

**WHEREAS**, Redeveloper and the City have been negotiating an Amended and Restated Redevelopment Agreement based upon a redevelopment proposal by Redeveloper; and

**WHEREAS**, Redeveloper exercised its option to purchase the Abbottsford Avenue Properties in connection with the development proposal and the City and Redeveloper executed a Purchase and Sale Agreement for the sale of the Abbottsford Avenue Properties on December 29, 2006, in connection with the redevelopment project proposal submitted to the City for approval by Redeveloper; and

**WHEREAS**, the City and Redeveloper entered and executed a Business Points Memorandum on December 29, 2006, setting forth the general terms and details of an Amended and Restated Redevelopment Agreement and have both expended effort toward evaluating and considering conceptual development plans for the Hotel Campus; and

**WHEREAS**, the City and Redeveloper have worked diligently toward entering an Amended and Restated Redevelopment Agreement and to carry out and implement a development proposal submitted to the City for approval, as set forth in the Amended and Restated Redevelopment Agreement attached hereto and made part hereof; and

**WHEREAS**, the proposed Amended and Restated Redevelopment Agreement sets forth Ocean Place Development LLC’s commitment to carry out a redevelopment project that the City

believes will implement and effectuate the goals and objectives of the Redevelopment Plan and serve as an impetus to further investment and improvement in the surrounding areas; and

**WHEREAS**, the Amended and Restated Redevelopment Agreement provides for substantial contributions from the Redeveloper toward design and construction of the Millennium Pier, as well as other public benefits;

**WHEREAS**, the City finds that the Amended and Restated Redevelopment Agreement and proposed project are substantially consistent with the Redevelopment Plan and Design Guidelines, with the exception of the second tower on the Hotel, which was previously approved by the City and by the State of New Jersey under the Coastal Areas Facilities Review Act (CAFRA), such approvals having expired, and a proposal for shared parking; and

**WHEREAS**, the Amended and Restated Redevelopment Agreement in the best interest of the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Long Branch that the Mayor of the City of Long Branch be and the same hereby is authorized to execute the Amended and Restated Redevelopment Agreement, annexed hereto and made a part hereof.

MOVED: GIORDANO

SECONDED: BROWN

AND ADOPTED UPON THE FOLLOWING ROLL CALL:

AYES: 5

NAYES: 0

ABSENT: 0

ABSTAIN: 0

STATE OF NEW JERSEY  
COUNTY OF MONMOUTH  
CITY OF LONG BRANCH

I, IRENE A. JOLINE, CITY CLERK OF THE CITY OF LONG BRANCH, DO HEREBY CERTIFY THE FOREGOING TO BE A TRUE, COMPLETE AND CORRECT COPY OF RESOLUTION ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING HELD ON Aug. 7, 2007

SPECIAL

IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND AND APPLIED THE OFFICIAL SEAL OF THE CITY OF LONG BRANCH, MONMOUTH COUNTY, NEW JERSEY THIS 8th DAY OF August 2007

Irene A. Joline  
CITY CLERK, N.J.C.

**AMENDED AND RESTATED  
REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**OCEAN PLACE DEVELOPMENT LLC**

**AND .**

**THE CITY OF LONG BRANCH**

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_ 2007 (hereinafter referred to as the "Agreement"), by and between the **CITY OF LONG BRANCH**, a body corporate and body politic of the State of New Jersey (which, together with any successor public body or officer hereinafter designated by or pursuant to law, is hereinafter referred to as the "City"), located at 344 Broadway, Long Branch, New Jersey 07740 and **OCEAN PLACE DEVELOPMENT LLC** (hereinafter referred to as the "Redeveloper," as such term is further defined herein) with a mailing address of 160 Sansome Street, 11<sup>th</sup> Floor, San Francisco, California 94104.

**WITNESSETH:**

**WHEREAS**, in 1985, the City, the Long Branch Redevelopment Agency and GEM Holding Company, Inc. entered into a "Disposition and Development Agreement Between the Mayor and Council of the City of Long Branch, New Jersey; The Long Branch Redevelopment Agency and GEM Holding Company, Inc." (referred to herein as the "Original Development Agreement") which is attached hereto as Exhibit A and which provided for the initial construction of a hotel consisting of 250 rooms with 25,000 square feet of retail space (the "Original Project") and granted GEM Holding Company, Inc. (and its successors and assigns) the right to further develop hotel and retail facilities consistent with the Zoning Ordinance in place at that time; provided, however, that the City acknowledges and agrees that (x) the City and Redeveloper have been unable to locate Exhibits B, C, D and E to the Original Development Agreement and believe that said Exhibits have been lost, misfiled, misplaced or inadvertently destroyed, and (y) the Redeveloper shall have no obligations or liabilities under the Original Development Agreement pursuant to, or by reason of, any of said Exhibits, and none of said Exhibits shall cause or give rise to any obligations or liabilities on the part of Redeveloper under the Original Development Agreement; and

**WHEREAS**, the Original Project is located on property shown as Lot 16.01 in Block 294 on the Tax Maps of the City (the "Original Project Property"); and

**WHEREAS**, pursuant to a resolution adopted 9/23/2000 by the City and an agreement between Gem Holding Company, Inc. and Tiburon Ocean Place LLC, all right, title, interest and benefit in the Original Development Agreement and all of the obligations and burdens of GEM Holding Company, Inc. contained therein were assigned to, and accepted and assumed by, Tiburon Ocean Place LLC effective 10/23/2000; and

**WHEREAS**, pursuant to a resolution adopted 3/14/2006 by the City and an agreement between Tiburon Ocean Place LLC and the Redeveloper, all right, title, interest and benefit in the Original Development Agreement and all of the obligations and burdens of GEM Holding Company, Inc. contained therein were assigned to, and accepted and assumed by, the Redeveloper effective 4/25/2006; and

**WHEREAS**, the Redeveloper is the current owner of the Original Project Property; and

**WHEREAS**, the Original Project was completed in accordance with the terms of the Original Development Agreement pursuant to a Certificate of Completion issued by the City on 1/18/1991; and

**WHEREAS**, the City acquired certain properties adjoining the Original Project Property and situated along Abbotsford Avenue, in particular Lots 1, 2, 4, 5, 6, 7, 8 and 9 in Block 293 and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in Block 294 as shown on the Tax Maps of the City (each individually an “Abbotsford Avenue Property” and collectively, the “Abbotsford Avenue Properties”); and

**WHEREAS**, the Original Development Agreement provides for the purchase of the Abbotsford Avenue Properties by the Redeveloper from the City; and

**WHEREAS**, the Redeveloper and the City entered into that certain Purchase and Sale Agreement dated 12/29/2006 pursuant to which the City agreed to sell, and the Redeveloper purchased on 3/30/2007, the Abbotsford Avenue Properties; and

**WHEREAS**, the Original Development Agreement includes the right of GEM Holding Company, Inc. to further develop and expand the hotel to 400 rooms with 40,000 square feet of retail space (which right is deemed incorporated herein), all to be constructed on the Original Project Property and the Abbottsford Avenue Properties (herein, together referred to as the “Redevelopment Properties”); and

**WHEREAS**, City acknowledges that Redeveloper is not in default in the performance of any covenant, agreement, obligation or condition contained in the Original Development Agreement, and

**WHEREAS**, the Redevelopment Properties are now subject to the requirements of the Oceanfront-Broadway Redevelopment Plan, which was adopted by the City in May 1996 (the “Redevelopment Plan”), after the execution of the Original Development Agreement; and

**WHEREAS**, pursuant to the Redevelopment Plan, the Redevelopment Properties are located in the Long Branch Oceanfront Redevelopment Zone (the “Redevelopment Zone”), for which the City serves as the redevelopment agency; and

**WHEREAS**, the Redevelopment Plan is supplemented by the Design Guidelines Handbook, which provides a common framework of site utilization and organization that meet with the City’s objectives for the Redevelopment Zone; and

**WHEREAS**, the Redevelopment Properties are located in the Hotel Campus, one of six redevelopment sectors identified in the Redevelopment Plan and the Design Guidelines Handbook; and

**WHEREAS**, the Design Guidelines Handbook 5 outlines the development rules for the Hotel Campus, permitting the development of residential and office uses, as well as the hotel and retail uses as permitted in the Original Development Agreement (the “Design Guidelines”); and

**WHEREAS**, the City seeks to encourage high quality, mixed-use development on the Redevelopment Properties, and such development shall make an important contribution to the City; and

**WHEREAS**, the Redeveloper has prepared and submitted to the City a concept plan for the phased development of a mixed use (hotel/office/retail/residential/parking) project (such plan, as approved by the City in accordance with the terms and conditions set forth in this Agreement, and as further defined in Section 1.01 hereof, being the “Redevelopment Project”) on the Redevelopment Properties, to be completed in Phases (as hereinafter defined); and

**WHEREAS**, the concept plan for the Redevelopment Project (the “Concept Plan”) has been reviewed and found generally consistent with the City’s goals and objectives for redeveloping the Redevelopment Zone and with the Redevelopment Plan; and

**WHEREAS**, after review and consideration of general concept plans for the proposed Redevelopment Project, the City has determined that the proposed conceptual plan by the Redeveloper best serves the overall interests of the City in terms of financial, social and land use benefits to be derived by the City within an acceptable time frame for development and completion of the Redevelopment Project; and

**WHEREAS**, the City has determined that it is in the best interest of the City and its residents for the City to enter into this Agreement with the Redeveloper for the purposes of setting forth in greater detail each party’s rights and obligations in connection with the redevelopment and construction of the Redevelopment Project and to amend and restate the Original Development Agreement; and

**WHEREAS**, the City and the Redeveloper acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement.

**NOW, THEREFORE,** it is agreed upon as of the date set forth above by the City and Redeveloper that this Agreement shall serve to amend and restate the Original Development Agreement to be consistent with the current Redevelopment Plan and the Design Guidelines Handbook 5 adopted by the City and with the Redevelopment Project as presently proposed by the Redeveloper, as follows, and in the event of any discrepancies between the provisions of this Agreement and the Original Development Agreement, this Agreement shall prevail.

**ARTICLE I**  
**DEFINITIONS**

1.01. Defined Terms. The parties hereto agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings specified below. Such definitions shall be applicable equally to the singular and plural forms of such terms and to the use of the upper or lower case initial letter of each word contained in such terms.

Affiliate: Shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by, or under direct common control with, such person. For purposes of this definition the term “control,” as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operations policies of such person or entity, whether through the ownership of voting securities or by contract.

Agreement: This Amended and Restated Redevelopment Agreement between the City and the Redeveloper for the redevelopment of the Redevelopment Properties located within the Redevelopment Zone in the City of Long Branch, County of Monmouth and State of New Jersey.

Applicable Law: Shall mean any and all federal, state and local laws, rules, regulations, statutes and ordinances applicable to the Redevelopment Project or to the Redevelopment Properties.

Approved Final Site Plan: The plan submitted to and approved by the City, and the Planning Board for Site Plan Approval in accordance with the Redevelopment Plan, the Design Guidelines and Section 3.07 hereof.

Certificate of Completion: A written certificate issued by the City in accordance Section 4.05 of this Agreement, which shall acknowledge that the Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to a certain residential unit, Phase or

aspect of the Redevelopment Project, if applicable, whose issuance shall serve to release the relevant residential unit, Phase or aspect of the Redevelopment Project and the Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law.

Certificate of Occupancy: As defined in the Uniform Construction Code at N.J.A.C. 5:23.1.4, and as may be issued by the City relative to a particular residential unit, commercial structure, Phase or aspect of the Redevelopment Project indicating that such residential unit, commercial structure, Phase or aspect of the Redevelopment Project has been completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

City: Shall mean the City of Long Branch as this party to this Agreement is further defined in the Recitals' hereof, together with any successors thereto.

City Additional Obligations: Shall have the meaning ascribed to such term in Section 3.14 hereof.

City Indemnified Parties: Shall mean the City of Long Branch and its officers, agents, employees, contractors and consultants.

COAH Obligations: Shall have the meaning ascribed to such term in Section 5.07 hereof.

Commencement of Construction (also referred to as "Commence Construction"): Shall mean the undertaking by the Redeveloper of any actual physical construction of any new structure, improvements and other infrastructure included in the Redevelopment Project.

Condo-Hotel Unit: Shall mean a studio, 1-bedroom or 2-bedroom suite, legally owned as a condominium, that, subject to the by-laws and regulations of the condominium association, may be used by the owner in his or her sole discretion or may be leased or rented for extended-stay or transient lodging in a hotel rental management program or otherwise and shares the lobby

and common facilities of the Hotel. Condo-Hotel Units shall not contain a full kitchen, but may include a kitchenette, within such unit.

Days: Whenever the word "Days" is used to denote time, it shall mean calendar days.

Deeds: Any deed of conveyance from the City to the Redeveloper conveying an Abbottsford Avenue Property.

Detailed Plans: Shall have the meaning ascribed to such term in Section 3.06 hereof.

Effective Date: The date this Agreement is last executed by either the Mayor of the City or by the authorized representative of the Redeveloper.

Events of Default: Shall have the meaning ascribed to such term in Section 6.01 herein.

Existing Holder: Shall have the meaning ascribed to such term in Section 8.02 hereof.

Existing Loan: The mortgage loan made by Existing Holder to Redeveloper secured by the Redevelopment Properties and any extensions or modifications thereof.

Final Site Plan and Subdivision Approval: Shall have the meaning ascribed to such term in Section 3.07 hereof.

Financial Institution: Shall mean (i) an insurance company, bank, real estate investment trust, investment bank, savings and loan association, trust company, commercial corporation, pension plan, pension fund or pension fund advisory firm, mutual fund or other investment company, governmental entity or plan, "qualified institutional buy" within the meaning of Rule 144A under the Securities Act of 1993, as amended (other than a broker/dealer) or an institution substantially similar to any of the foregoing, and being experienced in making commercial real estate loans; or (ii) any entity wholly-owned by any one or more institutions meeting the criteria in clause (i) above.

Force Majeure (also referred to as an Event of Force Majeure): Shall mean any acts of God, fire, volcano, earthquake, hurricane, blizzard, infectious disease, technological disaster, catastrophe, large scale infestation of any type, tremors, flood, extreme weather conditions, explosion, release of nuclear radiation, release of biotoxic or of biochemical agent(s), the elements, war, blockade, riots, mob violence or civil disturbance, any act or acts of terrorism, an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, unavailability of utilities, failure of transportation, strikes, walkouts, actions of labor union, governmentally imposed moratoriums, acts or omissions of third parties (including litigation by third parties), Court orders, laws, rules, regulations or other orders of governmental or public agencies, bodies and authorities or any other similar cause not within the reasonable control of the Redeveloper including, without limitation, (a) legal inability to comply resulting from a change of law including municipal laws regulating land use and construction, (b) any changes in legal requirements under any applicable environmental laws, as well as all known and unknown federal Environmental Protection Agency (EPA) and State of New Jersey Department of Environmental Protection (NJDEP) clearances, approvals or permits typical of the development process, (c) adverse market conditions negatively affecting the real estate market or Redeveloper's ability to effectively finance or market the Redevelopment Project, and (d) any unreasonable delays, not caused by Redeveloper, in the Redeveloper's receipt of any necessary Governmental Approvals.

Foreclosure: Shall have the meaning ascribed to such term in Section 10.03(c) hereof.

Governing Body: Shall mean the City Council of the City of Long Branch and any successors in interest thereto.

Governmental Application(s): Shall mean any and all submissions, supporting documents, reports or other proofs transmitted to any state, federal or local Governmental Agency, City, department, officer or agent for the purpose of obtaining authorization or approval of any aspect of the Redevelopment Project.

Governmental Agency: Shall mean any federal, state, county legislative or executive

office or local agency, department, commission, City, Court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the City of Long Branch, County of Monmouth, the State of New Jersey and the United States of America.

Governmental Approvals: Shall mean any and all approvals, authorizations, permits, licenses and certificates needed from governmental authorities having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the construction of the Redevelopment Project in all material respects in accordance with the Redevelopment Plan, the Design Guidelines and this Agreement.

Holder: Shall have the meaning ascribed to such term in Section 10.01 hereof.

Hotel Campus: Shall have the meaning ascribed to such term in the recitals hereof.

Impositions: All taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Redevelopment Properties conveyed to the Redeveloper or on any of the Improvements constructed thereon.

Improvements: Shall mean the buildings, structures and appurtenances to be constructed upon the Redevelopment Properties. The Improvements shall include, without limitation, curbs, sidewalks, roadways, surface parking facilities, site lighting and landscaping shown in such approved Detailed Plans and the Final Site Plan approved by the City and the Planning Board for construction on the Redevelopment Properties and used or to be used in connection with the buildings. The Improvements shall be constructed in accordance with the approved Detailed Plans. The Redeveloper reserves the right to construct the Improvements in one or more Phases (as hereinafter defined).

Infrastructure Improvements: Shall have the meaning ascribed to such term in Section 4.06 hereof.

Initial Plan: Shall have the meaning ascribed to such term in Section 3.06 hereof.

Insurance Requirements: All requirements set forth in the terms of any insurance policy(ies) covering or applicable to all or any part of the Redevelopment Properties or applicable to any Improvements thereon, or with respect to any portion of the Redevelopment Properties.

Local Redevelopment and Housing Law: N.J.S.A. 40A:12A-1, et seq., and as same may be amended from time to time.

NJDEP: The New Jersey Department of Environmental Protection.

Off-Site Improvements: Shall mean all off-site improvements not within the Redevelopment Project Site, and any incidental work associated therewith, reasonably necessary for construction and operation of the Redevelopment Project, as reasonably determined by the City and the Redeveloper, limited to storm drainage, sewers and utilities.

On-Site Improvements: Shall mean all improvements within the Redevelopment Project Site, and any incidental work associated therewith, reasonably necessary for construction of the Redevelopment Project, as reasonably determined by the City and the Redeveloper, including but not limited to grading, site drainage, walkways, hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, subsurface excavation and other site preparatory work, off-street parking, lighting within parking areas, landscaping and fire hydrants as shown on the Final Site Plan.

Permitted Exceptions: Shall have the meaning ascribed to such term in Section 11.02 herein.

Permitted Transfers: Shall have the meaning ascribed to such term in Section 8.02 hereof.

“Phase” shall mean either Phase I, Phase II, Phase III, or Phase IV, as applicable.

“Phase I”, “Phase II”, “Phase III”, and “Phase IV” shall mean, respectively, the various phases of the Redevelopment Project as indicated on Exhibit D attached hereto and made a part hereof.

Phased Development Schedule: Shall have the meaning ascribed to such term in Section 3.01(b) hereof.

Planning Board: The City of Long Branch Planning Board and any successor thereto exercising similar functions in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Public Improvements: Those Improvements that will be dedicated and conveyed to the City or other Governmental Agency or City upon completion of the Redevelopment Project and may include infrastructures, roads, sidewalks, walkways and enhancements required to be made to the Redevelopment Properties and the streets abutting and surrounding the Redevelopment Properties, infrastructures, utilities, catch basins, drainage pipes and structures, conduits, pipes, manholes; curbs, street and sidewalk lighting, street trees, roadways, rights of way, traffic signal equipment, traffic striping, signage and demarcations, fire hydrants, retaining walls, related hardware, any other off site improvements, and open space treatments not being retained by the Redeveloper, as shall be shown on the Final Site Plan approved by the Planning Board and required pursuant to the Redevelopment Plan, the Design Guidelines or this Agreement.

Qualified Transferee: Shall mean either (i) a real estate investment trust, bank, savings and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory fund, mutual fund, government entity or plan or (ii) a commercial property owner or developer with at least one principal having at least ten (10) years experience in relevant mixed-use projects of a similar size, quality, use and character, having a proven track record in the development and operation of commercial properties with similar uses and scale as the Redevelopment Properties and having a demonstrable financial capacity sufficient to reasonably satisfy the City of such property owner

or developer's financial ability and appropriate experience to fully perform all of the Redeveloper's obligations hereunder, including, without limitation, completion of the Improvements pursuant to this Agreement, in either case, which (a) has not for the immediately preceding five (5) year period been an adverse party to the City in any material litigation in which the City was a party, and (b) is not the subject of a bankruptcy or similar insolvency proceeding. Any Qualified Transferee shall be specifically required to comply with the provisions of Section 3.17 herein and make all Millennium Pier Fund Contributions in the amounts and pursuant to the payment schedules set forth therein, subject to the terms and conditions of this Agreement and particularly of Section 3.17. The above notwithstanding, a Qualified Transferee under subsection (ii) above shall be subject to the prior written approval of the City prior to any such transfer, which approval shall not be unreasonably withheld, conditioned, or delayed.

Redeveloper: Ocean Place Development LLC or an Affiliate or such successors in interest or any Transferee in accordance with the provisions of this Agreement.

Redevelopment Plan: Shall have the meaning ascribed to such term in the Recitals of this Agreement.

Redevelopment Project Site: Shall mean all of the Redevelopment Properties as described in this Agreement.

Redevelopment Project: The phased development and construction of a mixed-use residential/hotel/office/retail project on the Redevelopment Properties, inclusive of all Phases as defined herein, currently contemplated when completed to consist of approximately 275 residential condominium units, approximately 250,000 square feet of retail space, approximately 100,000 square feet of office space, an expansion of the hotel from the existing 254 guestrooms to approximately 314 guestrooms, approximately 200 "condo-hotel" units, plus ancillary facilities, in the aggregate consisting of approximately 1,500,000 square feet of space; approximately 2,300 off-street parking spaces; and common areas and other amenities as shown on Exhibit C. The City supports this Redevelopment Project as depicted by the Concept Plan in

Exhibit C and agrees to support efforts to secure all Governmental Approvals required by law including, but not limited to, CAFRA. The Redevelopment Project includes the demolition of a portion of the existing hotel structures on the Redevelopment Properties to be replaced with the improvements as shown on a Concept Plan attached hereto on Exhibit C.

Redevelopment Properties: Shall have the meaning ascribed to such term in the Recitals of this Agreement.

Site Plan: Shall have the meaning ascribed to such term in Section 3.06 hereof.

Site Plan Approval: Shall have the meaning ascribed to such term in Section 3.07 hereof.

Subdivision Approval: Shall have the meaning ascribed to such term in Section 3.07 hereof.

Substantial Completion: Shall have the meaning ascribed to such term in Section 3.01(c) hereof.

Survey: Shall have the meaning ascribed to such term in Section 2.11 herein.

Tolling Event: Means (i) an act or omission by one party or a third party that has a material adverse effect on the other party's ability to perform any obligation, requirement, commitment, or responsibility prescribed under this Agreement or on the use or operation of all or any portion of the Redevelopment Properties; or (ii) any extension granted by either party to the other party, to extend any proposed date in this Agreement; or (iii) any reasonable request by one party and approved by the other party in its sole and absolute discretion to extend the time for performance of any obligation, requirement, commitment or responsibility arising pursuant to this Agreement.

Transfer: Any transaction by which a Transferee obtains an interest in the Redevelopment Properties or in this Agreement by means or methods which include, but are not

limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure, assignment or deed in lieu of foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee, for the benefit of creditors.

Transferee: Any party to whom an interest in the Redevelopment Properties, or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, foreclosure, assignment or deed in lieu of foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors, including, without limitation, any Qualified Transferee.

1.02. Interpretation. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words "include", "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation".

1.03. Construction.

(a) All approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld or delayed.

(b) Unless otherwise specifically provided for in this Agreement, all actions, approvals, consents and acceptances required by or for the City, shall require the approval, consent or acceptance, as applicable, of the City Council.

(c) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

**ARTICLE II**

**[INTENTIONALLY OMITTED]**

**ARTICLE III**

**REDEVELOPER’S RESPONSIBILITIES**

**3.01. Planning, Design, Marketing and Redevelopment of Project.**

(a) The Redeveloper shall undertake, at its sole cost and expense, to plan, design, develop, market, and construct each particular Phase of the Redevelopment Project. The Redeveloper shall develop and construct the Redevelopment Project in strict accordance with the Approved Final Site Plan, as may be amended from time to time with the written approval of the Planning Board, and to the satisfaction of the City and its professionals (as well as any other entity having jurisdiction), in its sole but reasonable discretion, and shall not be deemed complete until approved as complete by the City in accordance with Section 4.05 hereof. Notwithstanding anything contained herein to the contrary, the City shall not be responsible for any costs associated with any improvements necessary for the development and construction of the Redevelopment Project. Except as specifically set forth herein, the costs of developing the Redevelopment Project Site and of constructing all improvements thereon, including, but not limited to, all required Infrastructure Improvements, shall be borne entirely by the Redeveloper.

(b) The Redeveloper shall use its best efforts to comply with the commencement dates and substantial completion dates for each Phase as indicated on the “Phased Development Schedule” below. The Redeveloper shall have the right in its sole discretion to proceed with development of any Phase of the Redevelopment Project, or part thereof, sooner than the time of commencement of the development as set forth in the Phased Development Schedule with respect to that Phase, subject to Section 3.02 below. The dates listed below are subject to the assumptions referenced in this Agreement. Whenever projected dates included in the Phased Development Schedule are referenced, the reference is to the schedule as it originally appeared in this Agreement, and any permitted extensions thereof.

**PHASED DEVELOPMENT SCHEDULE**

| <b><u>PHASE</u></b> | <b><u>COMMENCEMENT OF CONSTRUCTION</u></b>                               | <b><u>SUBSTANTIAL COMPLETION</u></b>  |
|---------------------|--|---|
| Phase I             | Redeveloper shall Commence Construction of Phase I within six (6) months | Redeveloper shall achieve Substantial Completion of Phase I no later than twenty- |

of the later to occur of (i) four (24) months after the date closing on its construction of Commencement of financing for Phase I, and (ii) Construction of Phase I. obtaining all Governmental Approvals for Phase I. Notwithstanding the foregoing, in no event shall Redeveloper Commence Construction of Phase I later than eighteen (18) months after the date of this Agreement.

Phases II - IV

|   |   |
|---|---|
| <p>Redeveloper shall Commence Construction of Phases II - IV sequentially, each within six (6) months of Substantial Completion of the prior Phase.</p> | <p>Redeveloper shall achieve Substantial Completion of Phases II - IV no later than twenty-four (24) months after the date of Commencement of Construction of each Phase.</p> |
|---|---|

(c) Substantial Completion of a Phase or a portion thereof consisting exclusively of residential condominium units or condo-hotel units, as such term is used in this subsection, is defined to mean the issuance of certificates of occupancy or temporary certificates of occupancy for ninety (90%) percent of the residential units scheduled to be constructed in that Phase. If Substantial Completion of the residential condominium units or condo-hotel units in a particular Phase is achieved on or before the date set forth on the Phased Development Schedule, the Redeveloper shall be granted an extension of an additional three (3) months to the date set forth on the Phased Development Schedule in which to complete the remainder of the development for that particular Phase of the Redevelopment Project. In the event that Commencement of Construction or Substantial Completion of any Phase is delayed by an Event of Force Majeure or a Tolling Event, the Redeveloper shall, at least thirty (30) days prior to the date set forth on the Phased Development Schedule for Commencement of Construction or Substantial Completion of the Phase, make application to the City for a reasonable extension of time to complete the Phase. Upon presentation by the Redeveloper of evidence demonstrating, to the satisfaction of the City and its professionals, in their sole but reasonable discretion, that an Event of Force Majeure or a

Tolling Event has delayed Commencement of Construction or Substantial Completion of the aforesaid Phase from the date set forth on the schedule above, the City shall grant the Redeveloper a reasonable extension of time in which to commence or complete the remainder of the Phase. The time for commencement or completion of any Phase of development shall, in any event, be extended for a period of time equal to any delay due to any of the causes set forth in Section 15.06 hereof, or as a result of any pending or threatened administrative procedures or litigation that may interfere with the Redeveloper's ability to begin or complete the construction of the Redevelopment Project.

(d) Parking.

(i) The areas designated for parking for the Redevelopment Project (the "Parking Areas") by Redeveloper shall be planned and constructed in accordance with the Design Guidelines and the Redevelopment Plan. The Redeveloper shall own all of the parking structure(s) constructed in the Redevelopment Project (the "Parking Decks").

(ii) Redeveloper and the City have agreed to the number of parking spaces for the Redevelopment Project consistent with the methodology of the shared parking analysis (the "Shared Parking Analysis") prepared by the City's parking consultant and attached hereto as Exhibit E. The Shared Parking Analysis constitutes the form and methodology, but not necessarily the final parking analysis and parking requirements for the Redevelopment Project, which shall be subject to final approval based upon confirmation of build-out and operations assumptions evidenced by detailed drawings and operations plans. Any modifications to the Redevelopment Project shall be subject to modifications in the Shared Parking Analysis and shall be subject to the approval of the City. The parties further acknowledge the importance of the availability of adequate parking to the success of the Redevelopment Zone and the achievement of the goals of the Master Plan and the Redevelopment Plan. Accordingly, the Parking Areas and Parking Decks shall be owned, managed, operated, and maintained by Redeveloper, subject to consultation with the City and in accordance with the City's reasonable requirements. The Parking Areas shall be subjected, prior to the commencement of construction of the Parking Decks, to a Parking Area Management Plan ("PAMP") to be recorded in the land records of the Monmouth County Clerk in form and substance reasonably satisfactory to the City and Redeveloper to ensure that the Parking Areas are managed consistent with goals of the

Master Plan, the Redevelopment Plan and this Agreement. Among other things, the City may require (a) rates charged to users of the Parking Areas shall be reasonable and market-driven, and (b) certain portions of the Parking Areas shall be operated as public parking facilities and sufficient spaces in a location to be mutually agreed upon by the City and Redeveloper shall be provided exclusively for transient parking. The shared parking analysis will be utilized by the Redeveloper and City in the preparation of the PAMP. Subject to the terms and conditions of the PAMP, valet and designated or reserved parking spaces within the Parking Areas will be permitted for residential uses and for a reasonable percentage of hotel uses, provided such proposed reserved parking spaces are not included among the 640, unrestricted public parking spaces that Redeveloper is obligated to provide pursuant to the Design Guidelines such that the 640 public parking spaces shall at all times remain available for unrestricted use by the public. Notwithstanding any provision to the contrary herein, (a) Redeveloper shall phase the construction of the Redevelopment Project to insure that there will not be a shortfall of required parking at the completion any particular Phase pursuant to the PAMP and (b) all non-residential parking (except for the designated or reserved hotel parking pursuant to the preceding sentence) shall be available to the public. The 640 public parking spaces required pursuant to the Design Guidelines for the Hotel Campus Project will be delivered in accordance with the completion of each Phase as shown in the schedule provided below, but in any event shall be delivered before or contemporaneously with, the completion of the new Millennium Pier by the City and such parking spaces shall be located within the structured parking garage to be built on Ocean Boulevard, after the date of issuance of the Certificate of Completion for such garage. The Parking Areas shall be designed with security measures to enhance the safety of the parking facilities.

| <b>Phase</b> | <b>Available Public Parking Spaces (Cumulative)</b> |
|--------------|---|
| <b>I</b>     | <b>180</b>  |
| <b>II</b>    | <b>308</b>  |
| <b>III</b>   | <b>468</b>  |
| <b>IV</b>    | <b>640</b>  |

3.02. Phasing; Acceleration; Delays. The Redeveloper shall undertake development of the Redevelopment Project in order to meet the dates for completion of the portions of the Redevelopment Project described above in Section 3.01, but shall not be obligated to do so in the event that Redeveloper has demonstrated to the City and its professionals, in their sole but reasonable discretion, that it is not economically or practically feasible to do so. The Redeveloper may accelerate the development of any Phase, regardless of the amount or percentage of work completed on the prior Phase or Phases, by obtaining the prior written approval of the City, not to be unreasonably withheld, conditioned or delayed. The City agrees that each Phase of the Redevelopment Project may be constructed in multiple subphases as determined by Redeveloper after consultation with the City. Notwithstanding the foregoing or anything contained in this Agreement to the contrary, including, without limitation, the Phased Development Schedule set forth in Section 3.01 above, at its sole discretion, the Redeveloper may construct multiple Phases simultaneously, but shall not be obligated to do so. In the event Redeveloper commences more than one Phase simultaneously, the date by which Redeveloper shall be required to substantially complete the applicable Phases of the Redevelopment Project shall be no later than twenty-four (24) months after the date of Commencement of Construction of those Phases. Notwithstanding anything stated above in this paragraph, the Redeveloper shall not be required to commence construction of the Redevelopment Project or any given Phase until any and all necessary environmental remediation has been completed with respect to that Phase of the Redevelopment Project pursuant to this Agreement. Nothing contained in this Agreement shall prohibit the Redeveloper, in its sole discretion, from electing to proceed with a given Phase even if any required environmental remediation is ongoing so long as proceeding in such a manner is permitted by all Applicable Law.

3.03. Amendments to Plan and Schedule. (a) The parties acknowledge that, due to the scale and mixed-use nature of the Redevelopment Project and in light of changing economic conditions and changes in the relevant commercial and residential markets, as well as seasonality of the existing hotel and other factors, it may be appropriate to alter the type of development and the timing of the development required by the Redevelopment Plan and/or as set forth in the

Phased Development Schedule it being understood that it is the intent of the parties that the project proceed as expeditiously as possible.

(b) The City hereby confirms that it shall, upon request of the Redeveloper, consider changes in the dates set forth in the Phased Development Schedule set forth in Section 3.01. The City agrees to consider and render a decision with respect to such a modification, which decision shall be in the reasonable discretion of the City, within twenty (20) days of a written request by Redeveloper.

3.04. Intentionally Deleted

3.05. Exclusive Redeveloper. Subject to the provisions hereof and so long as an event of default by Redeveloper has not occurred, beyond all applicable notice and cure periods, Redeveloper shall have the exclusive right to carry out the Redevelopment Project. For the term of this Redevelopment Agreement, City shall not have the right to designate any person or entity other than Redeveloper (which Redeveloper has been so designated), including owners, if any, of real property within the Redevelopment Properties, as a redeveloper within the Redevelopment Properties nor to enter into a redevelopment agreement pursuant to Section 8(f) of the Local Redevelopment and Housing Law with such persons or entities.

3.06. City Approval of Site Plan and Subdivision Plan.

(a) The Redeveloper shall at its own cost and expense, within ninety (90) days of the date of the City's approval of an amendment to the Redevelopment Plan, pursuant to Section 5.02(a) of this Agreement, to permit the construction of a second tower, the "condo-hotel" tower, consistent with the plans depicted in Exhibit C hereto, and subject to the Redeveloper's right to terminate this Agreement or otherwise reconfigure the Redevelopment Properties or the Redevelopment Project in accordance with the terms of this Agreement, cause to be prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey and submitted to the City a site plan (the "Initial Plan") and, if deemed necessary by the Redeveloper, a subdivision plan, for the construction of the Redevelopment Project, including, without limitation, all Phases thereof, consistent with the Concept Plan, the Redevelopment Plan and the Design Guidelines. The Redeveloper shall, to the extent not shown on the Initial Plan, also submit to the City the

following plans with respect to the Redevelopment Project, including, without limitation, all Phases thereof, for the City's review and acceptance in its sole discretion at the same time as it submits the Initial Plan pursuant to this Section 3.06 (the following plans referred to in this Section 3.06 (a) (i) through (v) below shall be collectively referred to as the "Detailed Plans"; the Detailed Plans and the Initial Plan shall be hereinafter collectively referred to as the "Site Plan"):

- (i) A plan showing the building(s), the site and Improvements, parking facility(ies), all elevations of the building(s), the exterior treatment of the building(s) including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades.
- (ii) A lighting plan demonstrating that all "on site" walkways, parking areas, and other areas accessible to pedestrians during the hours of darkness shall be adequately lighted to insure pedestrian safety. Such plan shall demonstrate the amount, placement, type and construction of the lighting.
- (iii) A phasing plan, to the extent applicable, showing the order of proposed construction, including any temporary or interim construction or operating arrangements. This phasing plan shall include the Redeveloper's estimate for the timing of any soil or environmental remediation and/or engineering and institutional controls of final site preparations, foundations, construction, landscaping, sidewalks and completion of construction, and should furnish such information and data necessary to enable the Redeveloper to schedule any public Improvements required.
- (iv) A plan showing the construction of all on-site roadways and streets and related facilities required by the Redevelopment Plan, this Agreement and the Redeveloper's Preliminary Site Plan as approved by the City and the Planning Board, or by the City in the reasonable exercise of its discretion.

- (v) Such other plans as the City may from time to time reasonably require in writing to promote the orderly redevelopment of the Redevelopment Properties.

(b) The City and its professionals shall have a period of forty-five (45) days after receipt of the Site Plan and subdivision plan, if required, to review such Site Plan and subdivision plan (including the facilities for parking areas and structured parking, if applicable), as being in complete conformity with the Concept Plan, the Redevelopment Plan, the Design Guidelines and this Agreement, and shall by the next following meeting of the City Council approve (with such approval not to be unreasonably withheld, conditioned or delayed) or furnish to the Redeveloper in writing notice of any changes or modifications, and the reasons therefor, required to be made in order to render the same in complete conformity with the Concept Plan, Redevelopment Plan, the Design Guidelines and this Agreement. If changes or modifications shall be required by the City and its professionals, the Redeveloper shall incorporate such changes and modifications and furnish revisions to the City for approval within sixty (60) days after receipt of written notice thereof or request a meeting to further discuss the requested revisions. The Redeveloper agrees that no Governmental Application for Site Plan or subdivision plan shall be filed with any Governmental Agency without the prior written approval of the City in accordance with this Section 3.06(b), it being agreed that the City has a vested interest therein, which approval shall be determined in the City's sole but reasonable discretion, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in the event the City fails to notify the Redeveloper of any requested changes within forty-five (45) days of its receipt of the Site Plan or subdivision plan, such plans shall be deemed approved by the City.

### 3.07 Filing of Site Plan Approval and Subdivision Application.

(a) Within thirty (30) days of the date the City has approved in writing (or has been deemed to have approved), or has otherwise waived its right to request changes to, the Site Plan or subdivision plan, the Redeveloper shall prepare and submit to the Planning Board all applications and supporting documents as shall be required to obtain preliminary and final approval of the Site Plan for the Redevelopment Project (the "Site Plan Approval") and, if

applicable, preliminary and final approval of the subdivision of the Redevelopment Properties or any part thereof (the "Subdivision Approval", the Subdivision Approval and the Site Plan Approval shall hereinafter collectively be referred to as the "Final Site Plan and Subdivision Approvals") in accordance with ordinances of the City and the Municipal Land Use Law (N.J.S.A. 40:55D - 1 et seq.), as the same may be amended from time to time. Notwithstanding the foregoing, but subject to the City's performance of its obligations herein, in no event shall Redeveloper submit to the Planning Board all applications and supporting documents as required in this Section 3.07(a) any later than the date being fifteen (15) months from the date of this Agreement. In the event that Redeveloper has not submitted such applications and supporting documents to the Planning Board within such fifteen (15) month period, the City shall have the right in its sole discretion to terminate this Agreement in which case neither party shall have any further rights or obligations under this Agreement except for those which expressly survive.

(b) Redeveloper agrees to apply timely for all Governmental Approvals not referred to in this Section 3.07, except for those Governmental Approvals which cannot in accordance with applicable law or regulations be applied for prior to the granting or issuance of other Governmental Approvals or those which it is not commercially reasonable to apply for prior to the granting or issuance of other Governmental Approvals.

### 3.08. Inability to Obtain Final Site Plan and Subdivision Approvals.

(a) City shall use its best efforts to facilitate the prompt review by its Planning Board of Redeveloper's application for Final Site Plan and Subdivision Approvals. In the event that, within one hundred eighty (180) days from the date on which Redeveloper's application for Final Site Plan and Subdivision Approvals referenced in Section 3.07 above, as applicable, is deemed complete by the Planning Board, the Redeveloper has not received from the Planning Board the Final Site Plan and Subdivision Approval, if required, in accordance with the Site Plan as approved by the City (such Site Plan as approved by the City and the Planning Board being the "Approved Final Site Plan"), through no fault of the Redeveloper, then, at the Redeveloper's election and upon written notice to the City, Redeveloper may terminate this Agreement and neither party shall have any further rights or obligations under this Agreement except for those which expressly survive.

(b) The Redeveloper hereby acknowledges and agrees that any deviations from the Site Plan which the Planning Board may require must be submitted to the City and its professionals for its review and approval prior to Redeveloper's re-submission to the Planning Board, which review and approval shall not be unreasonably withheld, conditioned or delayed.

(c) It is hereby agreed by the parties that any failure to obtain the Final Site Plan and Subdivision Approvals within the time required by Section 3.08(a), which (i) is caused by Force Majeure or a Tolling Event, (ii) involves the Redeveloper's appeal from any denial of or unreasonable conditions to any approvals by the Planning Board, (iii) involves the mutual adjournment or extension of the hearing period of the application(s) for Site Plan Approval and/or for Subdivision Approval by both the Redeveloper and the Planning Board, or (iv) is required due to actions, decisions or other requirements of other Governmental Agencies maintaining jurisdiction over properties located within the Redevelopment Zone, shall not be a breach of the performance of the time requirement of Section 3.08(a). With respect to clause (iii) and (iv) above, the Redeveloper's time constraint for acquiring the Final Site Plan and Subdivision Approvals as set forth in Section 3.08(a) shall be extended day for day with that agreed to by the Redeveloper and the Planning Board only if the Governmental Application then under consideration is consistent with the requirements of the Redevelopment Plan, the Design Guidelines, and with all Applicable Law. With respect to clause (i) above, the Redeveloper's time constraint for acquiring the Final Site Plan and Final Subdivision Approvals as set forth in Section 3.08(a) shall be extended during the period of the enforced delay, pursuant to Section 15.06 hereof. With respect to clause (ii) above, the Redeveloper's time constraint for obtaining the Final Site Plan and Subdivision Approvals as set forth in Section 3.08(a) shall be extended until such time as a final and non-appealable judgment is entered by a Court of competent jurisdiction.

(d) Notwithstanding anything contained herein to the contrary, including, without limitation, any extensions to any time periods in this Agreement for any reason in accordance with Section 3.08, but subject to the City's performance of its obligations herein, in the event that Redeveloper has not obtained its Final Site Plan and Subdivision Approvals and all other Governmental Approvals, except for building permits, which shall be obtained on a Phase by Phase basis, for the Redevelopment Project within twenty four (24) months from the date of this Agreement, the City shall have the right in its sole discretion to terminate this Agreement in

which case neither party shall have any further rights or obligations under this Agreement except for those which expressly survive.

3.09. Vesting. Redeveloper's rights to carry out the Redevelopment Project in accordance herewith and subject to the provisions hereof shall, notwithstanding any amendment to the Redevelopment Plan subsequent to the date hereof, be vested for the term of this Redevelopment Agreement.

3.10. Incorporation of Original Development Agreement. All remaining rights of Developer and all remaining obligations of City under the Original Development Agreement are deemed to be incorporated herein as the rights of Redeveloper and obligations of City, respectively, to the extent that such rights and obligations do not conflict with the Redevelopment Plan or the Design Guidelines. Notwithstanding the preceding sentence, the City agrees to amend the Redevelopment Plan for a second tower as provided in Section 5.02 hereof.

3.11. Responsibility of Sponsors for Redeveloper Financial Obligations. Because the Existing Loan does not permit Redeveloper to incur actual financial liabilities or to agree to assume potential financial liabilities as set forth in this Agreement, the City and Redeveloper agree that during the term of the Existing Loan, Redeveloper's sponsors, which are Tiburon Capital LLC and Orr Partners, LLC (the "Sponsors"), both of which entities have executed this Agreement in acknowledgement of same, shall be the direct and only obligors for all financial costs and liabilities that may arise under this Agreement. Because the Existing Loan permits only the payment of certain pre-development costs, the City and Redeveloper acknowledge that the Redeveloper must secure alternate financing for the Redevelopment Project in accordance with Article IX of this Redevelopment Agreement prior to the commencement of any Improvements other than certain pre-development activities permitted under the terms of the Existing Loan.

3.12. Intentionally Deleted.

3.13. Intentionally Deleted.

3.14. Reporting; Conditions of Approval. The Redeveloper shall, during the processing of the applications to obtain the Governmental Approvals, submit to the City, at such times as the City may reasonably request, but not more frequently than monthly, a written report describing the status of the Governmental Approvals and shall inform the City of all scheduled hearing dates known to Redeveloper as well as the results of any such hearing promptly after Redeveloper learns of same. If during the processing of such applications, the granting of such Governmental Approvals is conditioned upon any acts or forbearances on the part of the Redeveloper, and the Redeveloper determines, in its reasonable business judgment, that such condition or conditions, collectively or individually, prevent any Phase from being commercially viable, Redeveloper shall be under no obligation to accede to such conditions. In the event that the Governmental Approval is so conditioned as aforesaid, the Redeveloper may terminate this Agreement with respect to such Phase consistent with the terms of Article VI hereof, provided that the Redeveloper sends written notice to the City of the factors (including, but not necessarily limited to, time, amounts, results and reasoning) which led the Redeveloper to the conclusion to terminate and setting forth what conditions the City may oblige itself to perform which would change the Redeveloper's determination ("City's Additional Obligations"), within ninety (90) days of the event (or the last event) which created the condition (or collective conditions) resulting in the absence of commercial viability. Upon the delivery of written notice to the Redeveloper of the City's agreement to perform the City's Additional Obligations, the Redeveloper's termination of this Agreement shall be rendered null and void.

3.15. Reciprocal Easements. All site plan maps prepared in accordance with this Agreement shall contain or reference appropriately located reciprocal easements pursuant to which the owners of any of the other parcels of land within the Redevelopment Zone: (i) shall have, during the term of this Agreement, for use by themselves, their successors, assigns, invitees and guests, easements for access on, over, under and across the sidewalks and walkways within the Redevelopment Zone for use by pedestrian traffic; and (ii) shall have the right of flow and passage through common utility facilities. As appropriate, declarations of reciprocal (or cross) easements, in form and content prepared by the Redeveloper, and subject to the approval of the City and its professionals, which approval shall not unreasonably be withheld, conditioned

or delayed, shall be executed and recorded for the purposes of implementing the provisions of this Section 3.15.

3.16. On-Site Improvements. The Redeveloper shall install and maintain, at its own expense, all On-Site Improvements. In the construction of On-Site Improvements, the Redeveloper agrees to comply with the relevant municipal laws and regulations setting forth specifications applicable thereto. In addition, should the Redeveloper desire to relocate the above ground utilities underground as part of the Redevelopment Project, the Redeveloper shall do so at its own expense. The City agrees to cooperate with the Redeveloper in securing the necessary approvals to do such work.

3.17. Contributions to Millennium Pier Fund. The Redeveloper shall make cash contributions to a fund (the “Millennium Pier Fund”) to be established by the City specifically for the reconstruction of the “Millennium Pier” as anticipated in the Redevelopment Plan and ancillary facilities, including provisions for regularly scheduled ferry service to New York City. Within thirty (30) days of the Effective Date of this Agreement, Redeveloper shall make a cash contribution of \$150,000 to the Millennium Pier Fund, which monies shall be utilized by the City to update the Long Branch Millennium Pier Feasibility Study Technical Report dated October 2, 2000 (the “Pier Feasibility Study”). Contingent upon the closing of construction financing for Phase I of the Redevelopment by the Redeveloper, the Redeveloper agrees to make the following contributions to the Millennium Pier Fund:

- \$1,000,000, payable upon the completion of the update to the Pier Feasibility Study and commencement of Pier design.
- \$750,000, payable upon the completion of 50% of Pier design.
- \$600,000, payable upon completion of Pier design and receipt of approvals from all municipal, county, state and federal agencies, as required by law.

- \$2,500,000, payable upon commencement of construction of the Pier and presentation of documented evidence of availability of funds to the City to complete the construction of the Pier and ancillary facilities.
- \$5,000,000, payable upon completion of 50% of construction of Pier and ancillary facilities.
- \$10,000,000, payable upon completion of Pier construction and commencement of ferry service to New York City (the “Pier Completion Date”).

Notwithstanding any provision to the contrary in this Section 3.17, in the event of a sale of fee ownership of the Redevelopment Properties by Ocean Place Development, LLC or in the event of a transfer of substantially all of the ownership interests or rights in or to this Agreement of Ocean Place Development, LLC or either of its partners, Tiburon Capital LLC and Orr Partners, LLC, to an unaffiliated party or parties, then the payments of \$1,000,000, \$750,000 and \$600,000 for pier design and approval first shown above shall not be contingent upon the closing of construction financing for Phase I of the Redevelopment by the Redeveloper and shall be due as set forth in the above schedule without regard to whether Redeveloper has obtained construction financing for Phase I of the Redevelopment.

In the event that the closing of construction financing for Phase I of the Redevelopment is delayed beyond completion of the Pier design and receipt of approvals from all municipal, county, state and federal agencies for the Pier by a Tolling Event or by an Event of Force Majeure, the due date of each of the payments specified above shall be extended for the period time of the corresponding enforced delay. In the event that the commencement of construction

of the Pier does not occur within eight (8) years of the Effective Date, subject to a Tolling Event or an Event of Force Majeure, as defined in this Agreement, any payments otherwise not yet due the City pursuant to this Section 3.17 shall be waived and not required.

In consideration of the payments to be made pursuant to this Section 3.17, Redeveloper shall not be subject to any future contributions, payments or assessments in connection with the construction, maintenance or operation of the Pier.

Notwithstanding any provision to the contrary herein, Redeveloper shall not be responsible for any contributions to the Millennium Pier Fund under this Agreement for as long as the Existing Loan is outstanding, pursuant to Section 3.11 herein.

3.18. Project Modifications.

(a) The Redeveloper hereby acknowledges and agrees that the development and construction of the Redevelopment Project shall be in accordance with the Redevelopment Plan and the Design Guidelines and in the event the Redevelopment Project undertaken is changed or modified, notwithstanding the fact that such change or modification is authorized by the Redevelopment Plan, the City's prior written approval must be secured (which approval shall not be unreasonably withheld, conditioned or delayed) prior to development of the proposed altered Redevelopment Project. The City reserves its rights to contest any material modifications that may potentially arise in the course of the construction of the Redevelopment Project.

(b) The Redeveloper may not modify, alter or amend the Approved Final Site Plan at any time without the express prior written approval of the City and the Planning Board (which approval shall not be unreasonably withheld, conditioned or delayed), subject to the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; provided, however, that the Redeveloper may make those modifications, alterations and amendments to the Approved Final Site Plan that have been mutually deemed to be "minor" by the City (as evidenced by the prior written approval of the City and its professionals that such proposed modification is indeed minor) and Redeveloper.

3.19. Dedication of Streets. The Site Plan and the subdivision map, if applicable, should show the dedication and conveyance of any public rights of way or vacations and the Public Improvements that are to be dedicated to the City or other municipal agency or City. If applicable, the Redeveloper is obligated to dedicate and convey to the City or other Governmental Agency or City such rights of way and such other Public Improvements and vice versa, and this shall serve as the City's consent to such dedications and conveyances. With respect to street trees dedicated to the City, the Redeveloper shall be responsible to replace any such trees that die within one (1) year of planting by Redeveloper or its agents. Without limiting the foregoing, subject to Site Plan Approval, the City shall take the necessary actions in accordance with applicable law to vacate by appropriate enactment the right of way of Abbottsford Avenue. The Redeveloper shall retain the subsurface rights on any properties dedicated and conveyed to the City pursuant to the Site Plan and subdivision map, it being acknowledged that the Redeveloper shall be constructing improvements underground including, but not limited to, parking, loading, service access and utilities.

3.20. Timing on Selection of Retail Representative and City Review of Retail Plan. Prior to Redeveloper's submission of a Site Plan application to the Planning Board for Phase I of the Project, Redeveloper shall: 1) identify its choice of retail developer, with such party to possess a track record of at least ten (10) years of experience in retail development of a similar type, amount and character ("Specialty Retail Developer"); 2) provide a retail plan confirming the amount, type and location of retail spaces ("Retail Plan"); and 3) confirm what, if any, design and/or cost modifications will be a condition of involvement by the chosen Specialty Retail Developer. The City will have the right to approve Redeveloper's choice of Specialty Retail Developer, its Retail Plan and any required project design, phasing and/or cost modifications, if any, such approval not to be unreasonably withheld. Redeveloper's current retail plan contemplates the inclusion of movie theaters and bowling complex. Redeveloper has not at this time, however, sufficiently demonstrated the capacity to provide adequate parking for such uses and does not at this time have a Specialty Retail Developer. The City supports the inclusion of movie theaters and/or a bowling complex within the Project, generally as depicted in the Concept Plan, subject to City's approval of the Specialty Retail Developer and Retail Plan, as well as

adequate parking to be provided in accordance with the methodology of the Shared Parking Analysis and consistent with the Retail Plan.

3.21. Wind Turbines. Within thirty (30) days of the Effective Date, the Redeveloper, in good faith, shall retain the necessary consultants to determine, within one hundred and twenty (120) days of the Effective Date, the viability of the roof top mounted wind turbines. If the Redeveloper determines that wind turbines are not feasible or financially practical, or Redeveloper is unable to install wind turbines as a functioning sustainable design element, then the Redeveloper's architect shall work with the City's design consultant, in a good faith effort, to redesign Phase III of the Redevelopment Project, which might include the incorporation of mutually agreed upon uses and/or architectural treatments on that façade that are not presently there. If this is achieved, it will be in keeping with the overall development program for the Project.

3.22. Design Changes.

(a) If a design change is necessary due to actions of the Redeveloper, there shall be no reduction in the contributions to the City by the Redeveloper as set forth in Section 3.17 herein.

(b) If a design change is requested by the City due to its desire for a new or additional public benefit, the City agrees to a like kind reduction in dollars to the contribution to the Millennium Pier Fund by the Redeveloper as set forth in Section 3.17 herein. The value of the new or additional public benefit shall be determined by its actual cost and shall be applied in determining the like kind reduction in contribution.

(c) If any design changes not addressed by (a) and (b) above, the Redeveloper and City shall act in good faith to attempt to mutually resolve the design change without the need to resort to arbitration as provided in this Agreement.

3.23. Hotel "Going Dark".

It is acknowledged herein that it is of significant importance to the City that the Hotel remain operational and suffer the most feasibly minimal disruption possible throughout this Project and that Hotel guestrooms remain open to the greatest extent possible, consistent with the reasonable business judgment of the Redeveloper. Accordingly, the Redeveloper shall use its

best faith efforts to keep the Hotel in operation during the course of construction of the Redevelopment Project, except as necessary for construction or safety related reasons. If the Hotel is closed for construction or safety related reasons, the Redeveloper agrees to re-open the Hotel upon completion of the construction work or safety issue that necessitated the closing.

Upon commencement of the Redeveloper's efforts to market the sale of the Condo-Hotel units, the Redeveloper shall provide the City with quarterly progress reports concerning the sales of the Condo-Hotel units detailing the number of units sold, the number of such unit purchasers that are participating or are expected to participate in a hotel rental management program or otherwise using the unit for hotel guestroom uses, and the number of purchasers not participating in a hotel rental management program and using the unit for residential purposes. Such reports shall include a status of the progress on the Hotel renovations and progress in completing such renovations to reopen the Hotel guestrooms.

Notwithstanding any of the above, upon Completion of the renovations to the existing Hotel guestrooms and construction of approximately sixty (60) additional Hotel guestrooms, the approximately 314 Hotel guestrooms shall be re-opened exclusively for Hotel guestroom use and shall not be sold, organized into a condominium or cooperative, or otherwise used for residential uses. The exclusivity of the Hotel guestroom uses set forth above shall bind Redeveloper, its subsidiaries, affiliates, heirs, successors, assigns, and Transferees, and shall be included in and evidenced by the Declaration and Covenants pursuant to Article VIII herein.

#### **ARTICLE IV**

#### **CONSTRUCTION OF PROJECT**

4.01. Report on Progress. The Redeveloper shall make, in such detail and at such times as may be reasonably required by the City (but in no event more than monthly), a report in writing concerning the actual progress of the Redeveloper with respect to construction of the Redevelopment Project. The work and construction activities of the Redeveloper shall be subject to inspection by the City at reasonable times, upon reasonable prior written notice given to the Redeveloper in accordance with Section 14.01.

4.02. Suspension of Construction. If the Redeveloper shall abandon or substantially suspend construction activities on any Phase or subphase of the Redevelopment Project that was commenced for a period in excess of ninety (90) consecutive Days for reasons other than the advent of an Event of Force Majeure or other Tolling Event, and the suspension or abandonment is not cured, remedied or explained in writing within fifteen (15) calendar days after written demand by the City to do so, then such shall constitute an Event of Default by Redeveloper under this Agreement and the City shall have the right to seek proper remedies pursuant to this Agreement and all other remedies available to the City at law or in equity.

4.03. Intentionally Deleted.

4.04. Indemnification. (a) The Redeveloper shall, at its own cost and expense, indemnify and hold harmless the City and all City Indemnified Parties against, and Redeveloper shall pay, any and all liability, loss, cost, damage, claims, lawsuit, judgments, fine, penalty, or expenses, of any and all kinds or nature and however arising, imposed by law, which the City and/or any City Indemnified Parties may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon or arising out of, or resulting from or in any way connected with, personal injury, death, or damage to property, whether real, personal or mixed, resulting from Redeveloper's activities in constructing the Redevelopment Project or contracts entered into by the Redeveloper which relate to construction of the Redevelopment Project, or resulting solely from the Redeveloper's ownership of portions of the Redevelopment Properties, or resulting from the acquisition, construction or installation of the Redevelopment Project, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Redevelopment Project, the maintenance and functioning of the Project Improvements, or any other activities of the Redeveloper within the Redevelopment Properties during the construction of the Redevelopment Project. It is mutually agreed by the Redeveloper and the City that neither the City nor any City Indemnified Parties shall be liable in any event for any action performed under this Agreement and that Redeveloper shall save the City and all City Indemnified Parties harmless from any claim or suit in connection with the Redeveloper's obligations under this

Agreement, except for any claim or suit arising from the gross negligence, or intentional or willful acts of the City and all City Indemnified Parties.

(b) The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section 4.04, which may be brought or asserted against the City or the City Indemnified Parties; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Redeveloper, the City and all City Indemnified Parties and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy. The City shall give the Redeveloper notice of any such claim for which indemnification under this Agreement is sought (together with copies of any documents received) within thirty (30) Days of the City's receipt of same.

(c) Any cost for reasonable attorneys' fees in situations where it is necessary, after consultation by the Parties, for the City and/or the City Indemnified Parties to engage their own attorneys, experts' testimony costs, and all other reasonable costs to defend the City or the City Indemnified Parties shall be reimbursed to it by Redeveloper in connection with such indemnified claim.

(d) The provisions contained in this Section 4.04 regarding the Redeveloper's obligation to indemnify the City and all City Indemnified Parties shall not relieve any insurer of its obligation(s) to provide coverage to the Redeveloper as the insured, or to the City and all City Indemnified Parties as the respective additional insured. To the extent any such liability, loss, cost, damage, claims, judgments or expenses are covered under any insurance maintained by the City or any of the City Indemnified Parties, such parties shall look first to its insurance coverage.

#### 4.05. Certificates of Occupancy and Certificate of Completion.

(a) Upon completion of the construction of each residential unit, commercial structure or Phase of the Redevelopment Project in accordance with the Governmental Approvals, the Redeveloper may apply to the City for a Certificate of Occupancy for the subject residential unit, commercial structure or Phase.

(b) Upon completion of each Phase of the overall Redevelopment Project and for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law(s) the City shall issue a Certificate of Completion in proper form for recording, which shall acknowledge

that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the subject Phase or the overall Redevelopment Project in accordance with the requirements of the Applicable Law(s), the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to the Redeveloper's construction of the Redevelopment Project. Upon issuance of a Certificate of Completion (a) the agreements restrictions and covenants set forth in Section 7.02 hereof shall cease and terminate, except for those covenants and restrictions set forth in subparagraphs (b) and (c) of Section 7.02, hereof which shall survive in accordance with the terms of Section 7.04 hereof, (b) the conditions determined to exist at the time the Redevelopment Properties was determined to be in need of redevelopment shall be deemed to no longer exist, and (c) the land and Improvements constituting the subject Phase or the overall Redevelopment Project and the Redevelopment Properties shall no longer be subject to eminent domain. If the City shall fail or refuse to provide the Certificate of Completion within twenty (20) days after written request by the Redeveloper, the City shall provide to the Redeveloper a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the subject Phase of the Redevelopment Project, or portion thereof, in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for the Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, the Redeveloper may record it in the Monmouth County Clerk's office.

(c) The City acknowledges that to facilitate closings upon sales of completed residential units, if any, Redeveloper may need issuance of a Certificate of Completion on a unit-by-unit basis. Accordingly, if requested by Redeveloper, the City agrees to issue Certificates of Completion on a unit-by-unit basis for those units for which a contract of sale has been entered into.

4.06. Infrastructure Costs. The parties acknowledge and agree that, as a result of the scope of the Redevelopment Project, the Redevelopment Properties shall require infrastructure improvements, including, but not limited to Off-Site Improvements, so as to accomplish the

goals and objectives of the Redevelopment Plan and to assure the success of the Redevelopment Project (herein, "Infrastructure Improvements"). Notwithstanding the preceding sentence, Redeveloper shall not be responsible of any such infrastructure costs under this Agreement for as long as the Existing Loan is outstanding, pursuant to Section 3.11 herein. The Infrastructure Improvements include, but are not limited to, storm sewers, sanitary sewers, waterlines, and other utility lines. The City recognizes that the Redeveloper may request the assistance of the City, the County and/or other Governmental Agencies to provide financial assistance with respect to certain major Infrastructure Improvements upon the Redevelopment Properties. In such event, the parties shall participate and cooperate to identify and carry out a financing plan for such Infrastructure Improvements, including such financing provided for in Section 5.06(b); provided, however, that nothing herein shall be construed to require the City to provide financing for any such Infrastructure Improvements. Nothing herein shall, however, prohibit the Planning Board from conditioning its Governmental Approval on the Redeveloper agreeing to make a pro-rata monetary or in-kind contribution toward Infrastructure Improvements in conformance with Applicable Laws and which are typical in other individual projects similar to this Redevelopment Project. Nothing herein shall be construed to in any way impair the rights of Monmouth County to require Infrastructure Improvements as a condition of its issuance of any Governmental Approval under its jurisdiction.

**ARTICLE V**  
**CITY'S RESPONSIBILITIES**

5.01. Environmental Compliance with Respect to Abbotsford Avenue Properties. Redeveloper understands and acknowledges that the City acquired the Abbotsford Avenue Properties from various prior owners without completing an environmental assessment of the Abbotsford Avenue Properties. The City shall use its commercially reasonable efforts to cause the prior owners of the Abbotsford Avenue Properties to be responsible for any environmental remediation, mitigation or cleanup costs required by Applicable Law in connection with their respective property. Redeveloper reserves the right to file a cost recovery action with respect to any environmental remediation, mitigation or clean up costs, in accordance with Applicable Law.

5.02. Amendments to Redevelopment Plan and Design Guidelines.

(a) The parties acknowledge that the Original Development Agreement provided for the construction of a second tower within the Hotel Campus and that construction of such tower previously received CAFRA approvals. Although the construction of the second tower is not consistent with the Redevelopment Plan and the CAFRA approvals have since expired, the parties desire to facilitate the construction of the Project in a manner consistent with the previously contemplated and approved project under the Original Development Agreement. In conjunction therewith, Redeveloper has also proposed a shared parking plan that is not fully consistent with the Design Guidelines, but which shall provide for adequate parking to support the parking needs of the Project as well as provide additional needed public parking.

In furtherance of the above goals, within thirty (30) days of the Effective Date of this Agreement, the City agrees to prepare a proposed amendment the Redevelopment Plan and jointly with Redeveloper submit such proposed amendment and the shared parking plan to CAFRA for consideration and comment with the proposed schedule for adoption by Ordinance. Within forty five (45) days of City's submission of the proposed plan amendment and shared parking plan to CAFRA, the City agrees to introduce the proposed amendment to the Redevelopment Plan and Design Guidelines as a proposed Ordinance. The City shall use best efforts to obtain CAFRA approval of such amendment in accordance with Applicable Law, to permit the construction of a second tower within the Hotel Campus, the "condo-hotel" tower, consistent with the plans depicted in Exhibit C hereto, as well as CAFRA approval of the shared parking plan. If CAFRA fails to approve the amendments to the Redevelopment Plan to permit the construction of a second tower within the Hotel Campus, the "condo-hotel" tower, consistent with the plans depicted in Exhibit C hereto, and approve the shared parking plan and the City is thereby unable to amend the Redevelopment Plan and Design Guidelines within nine (9) months of the execution of this Agreement, the Redeveloper shall redesign the Redevelopment Project consistent with the Redevelopment Plan and Design Guidelines. Such time may be extended by mutual agreement of the Parties.

(b) The City agrees to approve, pursuant to [Sections 345-101D and E] of the Redevelopment Plan, any application and plan submitted by Redeveloper that is consistent with the Concept Plan and substantially consistent with the Redevelopment Plan and Design

Guidelines, except as set forth in Section 3.10 herein. If the City does not approve any application or plan based on an alleged inconsistency with the Redevelopment Plan and/or the Concept Plan or Design Guidelines after the Planning Board has determined that the plans are substantially consistent with the Concept Plan and Redevelopment Plan and Design Guidelines, or if the Planning Board approves any applications or plans, and such approval is overturned by an order of the Superior Court and the Redeveloper and the City elects not to appeal, then the City agrees to amend the Redevelopment Plan pursuant to [Sections 345-98] of the Redevelopment Plan to eliminate any alleged inconsistency in a manner that allows the Redevelopment Project to be constructed consistent with the Concept Plan, to the extent such amendment does not conflict with Applicable Law or any Superior Court order.

5.03. Cooperation. The City shall cooperate, without cost or expense to the City, in the preparation and prosecution of any and all Governmental Applications and the Redeveloper's receipt of all necessary Governmental Approvals required for the Redevelopment Project, including, but not limited to, the execution of any and all necessary permit documentation. The City further agrees to support, without cost or expense to the City, any Governmental Application filed by the Redeveloper with the Planning Board for approval of the Site Plan, Final Site Plan or Subdivision Plan, if necessary, and any site or maps with all other Government Agencies, provided that such plans conform to the ordinances of the City, the Redevelopment Plan and this Agreement, and provided that the City has already approved such plans in writing pursuant to the terms of this Agreement.

5.04. CAFRA. The City represents that it has entered into an agreement with the NJDEP, Land Use Regulation Program, under which the standards set forth in the Design Guidelines encompass all Coastal Area Facilities Review Act ("CAFRA") requirements, subject to final review and approval by CAFRA. Therefore, CAFRA and City development requirements for development approval are the same; development in conformance with the City development requirements would not then be subject to different requirements under CAFRA. Further, the requirements of CAFRA shall be addressed through compliance with the Redevelopment Area Permit, as set forth in N.J.A.C. 7:7-7.4 (30 N.J.R. 645 (1998)).

5.05. Governmental Approval Fees. Redeveloper shall pay all City permit and approval fees (“City Fees”) and other non-City fees for Governmental Approvals, which include, but are not limited to, any application fees for Governmental Approvals payable by the City to all required Governmental Agencies in connection with the Redevelopment Project, or application fees for which the City is required to reimburse other Governmental Agencies in connection with Governmental Approvals.

5.06. Tax Abatements; Tax Increment Financing.

(a) City acknowledges that Redeveloper may submit a request under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., for approval of one or more agreements for payments in lieu of taxes (“PILOT Agreement”). If proposed by Redeveloper, City agrees to consider such request in good faith on terms acceptable to the City, and to use reasonable efforts to adopt an ordinance and execute a PILOT Agreement prior to Commencement of Construction of Phase I that shall provide for payments in lieu of taxes for municipal services supplied to the Redevelopment Project for a period not to exceed twenty (20) years; however, the Redeveloper’s obligations as set forth in this Agreement are not contingent on the adoption of the PILOT Agreement. Any PILOT Agreements shall be subject to approval in accordance with all other applicable laws and procedures.

(b) City acknowledges that Redeveloper may submit a request for the City to provide financial assistance to the Redevelopment Project by exercise of its powers and authority pursuant to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (“RAB”), and/or the Revenue Allocation District Financing Act, N.J.S.A. 52:27D-459 et seq. (“RAD”) If proposed by Redeveloper, City agrees to consider such request in good faith on terms acceptable to the City, and any RAB or RAD shall be subject to approval in accordance with all other applicable laws and procedures.

5.07. Affordable Housing.

(i) On January 25, 2007, the New Jersey Appellate Division invalidated the Substantive Rules of the New Jersey Council on Affordable Housing for the period beginning December 2004 (N.J.A.C. 5:94) and the procedural rules of the New Jersey Council on Affordable Housing for the period beginning December 2004 (N.J.A.C. 5:95) (the “COAH Rules

or Third Round Rules”). Thus, the Third Round growth share methodology employed for calculating a municipality’s affordable housing obligation was also invalidated. COAH is in the process of revising these regulations and was required to have completed this revision within six months of the court decision, but has just been granted a further six (6) month extension. As of the Effective Date, COAH has not released any such revisions to the Third Round Rules. Therefore, no statutory or regulatory requirements currently exist for the provision of affordable housing as part of the Redevelopment Project. However, the Redeveloper acknowledges and agrees that development of the Redevelopment Project may generate an obligation on behalf of the City (“COAH Obligation”) to provide for affordable housing pursuant to the Fair Housing Act,, and the,COAH Rules, as may be adopted. Redeveloper hereby agrees to comply with any COAH Rules and any ordinance of the City implementing same, which may be adopted and require a COAH Obligation.

(ii) The City’s desire is for the Redeveloper to construct any COAH Obligation as part of the Redevelopment Project. For purposes of this Agreement only, the Parties agree to apply the Third Round Rules, as invalidated by the court, to estimate the COAH Obligation that may be generated by the Redevelopment Project and to agree upon a contribution by the Redeveloper in lieu of constructing the COAH Obligation as part of the Redevelopment Project. The Parties acknowledge that the COAH Obligation may change and the contribution in lieu of construction may change, if, and when COAH Rules are adopted, the parties shall fully comply with such rules. The Redevelopment Project is estimated to generate a COAH Obligation of approximately seventy seven (77) units. The Redeveloper agrees to a contribution in lieu of construction in the amount of Fifty Thousand (\$50,000.00) Dollars per required COAH unit. The number of units to meet the COAH Obligation and the amount of the contribution shall be determined cumulatively for the Redevelopment Project as each Phase is constructed and completed.

(iii) In order for the Redeveloper to construct the COAH Obligation as part of the Redevelopment Project, the City shall agree, on a best efforts basis, to grant additional building height and density in a beneficial way to the Redeveloper to accommodate construction of the COAH Obligation without affecting the permitted other contemplated uses as depicted in Exhibit C hereto. The location of the COAH Obligation on the Redevelopment Properties shall be arrived at mutually between the Redeveloper and the City taking into consideration the City's

desire to not completely segregate the affordable housing from the community while also taking into consideration the Redeveloper's desire to maintain market viability and real estate values for the project. The City shall be responsible for achieving all ordinance changes and/or CAFRA approvals required to permit for the construction of COAH Obligation as part of the Redevelopment Project and any additional building height and density to support such construction within ninety (90) days of the Effective Date.

(iv) In the event that the City has not made the necessary ordinance changes and obtained CAFRA approvals as provided herein within ninety (90) days of the Effective Date, or in the event that no COAH Rules have been adopted at the time the City issues a Certificate of Completion for each Phase, the Redeveloper agrees to make a contribution in accordance with subsection (ii) above and such contribution shall be due and payable, on a Phase by Phase basis, within ninety (90) days of issuance of the Certificate of Completion for the relevant Phase.

5.08. Payment of City's Professional Costs. Subject to Section 3.11, commencing upon the Effective Date, the Redeveloper shall have the obligation of paying for the City's actual, out-of-pocket and reasonable professional costs, including, without limitation, all legal, planning and engineering fees, related to the Redevelopment Project. This obligation shall continue until such time as the final Certificate of Completion is issued by the City for the Redevelopment Project, at which time the Redeveloper shall no longer have the obligation to pay for the City's professional costs related to the Redevelopment Project. From and after the Effective Date, the City shall provide the Redeveloper with monthly statements setting forth the actual, out-of-pocket costs incurred by the City during the prior month (and on a cumulative basis). The Redeveloper shall have thirty (30) days from receipt of each monthly statement to pay the City for such costs incurred by the City during the prior month. Failure to pay such costs shall not be considered an Event of Default under this Agreement.

5.09. Beach Use, Rights and Security by Redeveloper.

(a) City agrees that Redeveloper's hotel and other guests, customers, patrons, invitees and employees shall have free, unlimited and unrestricted rights to access and use of the beach area adjacent to Original Project Property.

(b) City agrees to designate the above referenced area in clause (a) hereof, a “bathing” beach, to provide lifeguards, to provide a strict code and policing of the beach and promenade to prevent (except as provided in the Original Development Agreement and herein) the sale and consumption of food and beverages thereon, disrobing, organized athletic activities, presence of criminals or other undesirable behavior or conditions and to maintain and clean the beach area.

(c) Redeveloper shall be afforded the privilege at its own cost and expense to maintain a building for a refreshment area, comfort facilities and lounge chairs for its guests in proximity to the promenade and beach, the location, size and design of which requiring the prior written approval of the City and any other land use board or Governmental Agency having jurisdiction (any such approval by City or other board or Governmental Agency not to be unreasonably withheld, conditioned or delayed). The Redeveloper shall have the nonexclusive right to host activities and to serve food and beverages to its guests on the beach in the normal course of business, and to host certain other activities, including bonfires on the beach, after receiving the prior written approval of the City and any other Governmental Agency having jurisdiction (any such approval by City or other board or Governmental Agency not to be unreasonably withheld, conditioned or delayed) as required.

(d) Redeveloper shall be afforded the right, at its own cost and expense, to provide access over or under said promenade by an elevated overpass or tunnel for the use of its hotel guests, residents and tenants of Redevelopment Project, said right being subject to any necessary approvals from the State of New Jersey, Department of Environmental Protection or other Governmental Agency having jurisdiction (any such approval by City or other board or Governmental Agency not to be unreasonably withheld, conditioned or delayed).

(e) Redeveloper agrees to pay the City an annual service charge equal and proportionate to the charge to other persons or entities, for which Redeveloper shall be entitled and authorized to issue tickets on a daily basis in lieu of badges, in accordance with Applicable Law.

(f) Redeveloper and its employees and guests shall have a right-of-way for unlimited access to and across the promenade. No structure shall be constructed by the City over the ground level promenade, except for the gazebos and comfort stations. The City agrees in perpetuity, to maintain the promenade in good repair, condition and appearance, to illuminate same and provide security thereon.

All of the rights and obligations stated in Section 5.09 herein shall expressly survive termination of this Agreement.

5.10 Intentionally Deleted.

5.11. Hotel and Retail Uses Permitted Under Original Development Agreement. The City certifies to the Redeveloper that the additional hotel rooms approved pursuant to the August 27, 1987 Planning Board resolution for the Original Project Property, including the construction of a hotel, are in conformance with the Redevelopment Plan, Design Guidelines and the December 23, 1986 CAFRA permit.

## **ARTICLE VI**

### **DEFAULT**

6.01. Events of Default. Prior to completion of the portion of the overall Redevelopment Project as certified by the issuance of a Certificate of Completion for the relevant Phase of the Redevelopment Project by the City and only with respect to such Phase of the Redevelopment Project, subject to the advent of an Event of Force Majeure or Tolling Event, each of the following shall constitute an event of default (hereinafter referred to as an "Event of Default") by the applicable party, respectively:

(a) The Redeveloper is in default in the payment of any sum payable to the City hereunder, as the same shall become due and payable, and such default shall have continued for a

period of thirty (30) days after receipt of written notice specifying such default, and demanding that same be remedied shall have been given to the Redeveloper by the City; or

(b) The Redeveloper or its successor in interest shall violate any of its obligations to perform under the terms of this Agreement, including, but not limited to, to the construction of the Redevelopment Project, including, without limitation, the dates for the commencement of construction and completion thereof, subject to the advent of an Event of Force Majeure or Tolling Event and the provisions of this Agreement, or shall abandon or substantially suspend construction work of a particular Phase or subphase for a continuous period in excess of ninety (90) Days as provided in Section 4.02 hereof, unless such suspension arises out of a an Event of Force Majeure, Tolling Event or other delay set forth in this Agreement, and any such default, violation, abandonment, or suspension shall not be cured, ended, or explained, if so permitted in accordance with the terms of this Agreement, within thirty (30) days after written demand by the City to do so or such longer period if incapable of cure within such thirty (30) day period, provided that the Redeveloper has commenced and is diligently prosecuting such cure; or

(c) The Redeveloper or its successor in interest shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition 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 thirty (30) days after written demand by the City to do so; or

(d) There is, in violation of this Agreement, any Transfer of the fee title to the Redevelopment Properties or a portion thereof (except for Permitted Transfers as provided in Section 8.02) and such violation shall not be cured within sixty (60) days after written demand served upon the Redeveloper by the City, unless extended in writing; or

(e) The Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or the Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of the Redeveloper as a bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state,

now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within sixty (60) days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

(f) The City fails to perform any of its obligations contained in this Agreement.

(g) The City fails to convey title to the Abbottsford Avenue Properties as provided herein.

6.02. Right to Cure Upon Event of Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within sixty (60) days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to commence to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may pursue its remedies in accordance with this Agreement.

### 6.03 City's Remedies.

If the Redeveloper shall fail to timely cure any Event of Default by Redeveloper as set forth in Section 6.01, the City shall be entitled, in its sole and absolute discretion, subject to Section 3.11, to all rights and remedies available at law or in equity including, without limitation, monetary damages and all equitable remedies, including specific performance of this Agreement, and if it prevails all reasonable costs and expenses including, without limitation, attorneys fees and costs. Additionally, the City may terminate this Agreement and seek reimbursement of all actual monetary damages resulting from such failure to cure the Event of Default, subject to a \$750,000 cap for the City's reasonable soft costs that are (a) attributable to the Redeveloper's default and (b) incurred after 12/29/2006. Further, the City shall have the right to:

(a) de-designate Redeveloper as to any Phase which has not been substantially completed by Redeveloper, it being understood and agreed that if Redeveloper shall fail to cure any such default in accordance with Section 6.02 before substantial completion of any Phase, the City may de-designate Redeveloper for that Phase and for any other Phases that are not substantially completed by Redeveloper at that time. If Redeveloper shall fail to cure any default

in accordance with Section 6.02 after the substantial completion of any Phase, Redeveloper shall not be de-designated as Redeveloper for that substantially completed Phase, but the City shall have all other rights and remedies provided under this Agreement and Applicable Law; provided that any such de-designation shall not apply to any part of the Redevelopment Project for which a Certificate of Occupancy or Certificate of Completion was issued and shall not defeat, render invalid or limit in any way the lien or rights or interests of holders of institutional financing or financial assistance; and

(b) retain as liquidated damages all monetary and in-kind contributions for Infrastructure Improvement or contributions to the Millennium Pier Fund that have been made by the Redeveloper to the date of such default pursuant to Sections 4.06 and 3.17 respectively of this Agreement.

6.04. Redeveloper's Remedies. If the City shall fail to timely cure any Event of Default by City as set forth in Section 6.01, the Redeveloper shall be entitled, in its sole and absolute discretion, to all rights and remedies available at law or in equity including, without limitation, monetary damages and all equitable remedies, including specific performance of this Agreement, and if it prevails all reasonable costs and expenses including, without limitation, attorneys fees and costs.

6.05 Limitation of Liability. City agrees that in the event of any Default or breach under this Agreement by Redeveloper, City shall look solely to Redeveloper and Redeveloper's property interest in the Redevelopment Project for the recovery of any judgment or damages, and City agrees that no member, manager, officer, principal, employee, representative or other person affiliated with Redeveloper shall be personally liable for any such judgment or damages, except as set forth in Section 3.11 herein. In no event shall Redeveloper be responsible for any consequential or punitive damages.

6.06. No Waiver of Rights and Remedies by Delay. Any delay by the aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or shall not deprive the aggrieved party of or limit the aggrieved party rights in any way (it being the intent of this provision that the

aggrieved party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved party may still resolve the problems by the default involved; nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other defaults by the other party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

6.07. Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative, and, except as otherwise specifically provided by this Agreement, the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

## ARTICLE VII

### COVENANTS AND RESTRICTIONS

7.01. Declaration of Covenants and Restrictions. The Redeveloper understands and acknowledges for itself, its successors, Transferee(s) and assigns that the Deeds from the City to the Redeveloper for the Abbottsford Avenue Properties contain (or shall contain, if granted subsequent to the date of this Agreement) the covenants set forth in Section 7.02 hereof, and Articles VIII, X, and XII hereof, as well as other relevant provisions of this Article VII, and any other such covenants and restrictions required under the Local Redevelopment and Housing

Law, to be observed by the Redeveloper, its successors, Transferee(s) and assign(s). In addition, the Redeveloper agrees to record, and provide a recorded copy to the City, a Declaration of Covenants and Restrictions (hereinafter referred to as the "Declaration"), with respect to all Redevelopment Properties that shall run with such lands to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deeds as referenced above; provided, however, that the Declaration shall not be recorded until such time as the Existing Loan is no longer outstanding. All provisions hereinafter with respect to the insertion in or the application to the Deeds 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.

7.02. Description of Covenants and Restrictions. The Covenants and Restrictions to be imposed upon the Redeveloper, its successors and assigns, and recorded in the Deeds and the Declaration, shall set forth that the Redeveloper and its successors, Transferee(s) and assigns shall:

(a) Devote the Redevelopment Properties to the uses specified in the Redevelopment Plan, as may be amended, and as agreed herein, and shall not devote the Redevelopment Properties to any other use(s), including but not limited to the restriction set forth in Section 3.23 herein;

(b) Pursuant to the Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Redevelopment Properties or any buildings or structures erected or to be erected thereon, or any part thereof;

(c) In the sale, lease or occupancy of the Redevelopment Properties or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status, and the Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status to the extent required by the Applicable Law;

(d) Commence Construction of the Improvements within the time set forth in this Agreement, which the City expressly finds to be reasonable; and

(e) Not sell, lease or otherwise transfer the Redevelopment Properties, or any part thereof, without the written consent of the City, as set forth in Article VIII, except for Permitted Transfers set forth in Section 8.02, hereof.

7.03. Effect and Term of the Covenants and Restrictions. Subject to the provisions of Section VIII hereof, it is intended and agreed, and the Deeds and the Declaration shall so expressly provide to the extent permitted by Applicable Law, that the Covenants and Restrictions set forth in Section 7.02, hereof 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 Redevelopment Properties, 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 Redevelopment Properties or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 7.02, hereof, shall remain in effect until the issuance by the City of a Certificate of Completion, as provided in Section 4.07, hereof, (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate), except, however, that the Covenants and Restrictions provided in Sections 7.02(b) and (c), hereof, shall remain in effect without limitation as to time; provided that, until their termination as provided above, such Covenants and Restrictions shall be binding on the Redeveloper itself, each successor in interest to the Redevelopment Project, the Redevelopment Properties, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successors, Transferee(s) or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Properties, and the Improvements constructed thereon or any part thereof.

7.04. Enforcement by City. In amplification, and not in restriction of the provisions of this Article VII, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 7.02 hereof 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 Covenants and Restrictions shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The City shall have the right, in the event of any breach of any such Covenants and Restrictions, 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 such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

**ARTICLE VIII**  
**PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

8.01. Prohibition Against Transfers. The parties to this Agreement acknowledge that pursuant to Section 7.02(e) hereof, the Redeveloper has covenanted not to effectuate or permit any Transfer other than Permitted Transfers set forth in Section 8.02, hereof. The Redeveloper further represents and agrees for itself, its successors and assigns, that except only by way of security for and only for the purpose of obtaining the financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Properties, or any part thereof, to perform its obligations with respect to completing the Redevelopment Project and any other purpose authorized by this Agreement, that the Redeveloper has not made or created, and that it shall not, prior to the completion of the Redevelopment Project, make or create, or suffer to be made or created, any sale, lease, conveyance or transfer in any other mode or form of the Redevelopment Properties or Improvements or any part thereof or any interest therein, except for Permitted Transfers set forth in Section 8.02, without the prior written approval of the City, which cannot be unreasonably withheld, conditioned or delayed, excepting the transfers identified in Section 8.02, hereof.

8.02. Permitted Transfers. Notwithstanding the restrictions contained in Section 7.02(e) and Section 8.01 above, the following transfers (hereinafter referred to as “Permitted

Transfer(s)”) are exceptions to the prohibition set forth in Section 7.02(e) and Section 8.01, hereof and shall not require prior approval by the City, the City hereby consenting to such Transfers: (a) a mortgage or mortgages and other liens, security interests, assignments and encumbrances for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Redevelopment Project or any aspect thereof subject to Articles VI and X, hereof, (b) utility and other development easements; (c) conveyance and/or lease to the bona fide purchaser/tenants (or their successors) of the individual residential condominium units, condo-hotel units, the hotel or commercial/retail space developed and constructed as part of the overall Redevelopment Project and for which a temporary or permanent Certificate of Occupancy has been issued (d) an assignment of Redeveloper's rights under this Agreement to an entity under the Control of the Redeveloper, (e) a Public Offering Statement filing with and approval by the State of New Jersey Department of Community Affairs, (f) a transfer of any interest in this Agreement or in any portion of the Redevelopment Properties to a Transferee provided that at least one (1) member of the Redeveloper is a majority partner, managing member or majority shareholder in the Transferee entity having Control over the Transferee entity and provided the Transferee is subject to, and assumes, the terms of this Agreement; (g) an assignment and/or transfer of Redeveloper’s interest in this Agreement to an Affiliate, provided that such Affiliate is subject to the terms of this Agreement; (h) a Transfer of any interest in the Redevelopment Properties to a qualified urban renewal entity (as that term is defined in the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. created by Redeveloper or its principals for the sole purpose of developing the Redevelopment Project; (i) upon the occurrence of an event of default by Redeveloper under a loan from a Holder, including but not limited to the Existing Loan, a sale of fee ownership of the Redevelopment Properties or any transfer of ownership thereof to Barclays Capital Real Estate Inc. (together with its successors and assigns, “Existing Holder”) (or its designee) by foreclosure or action in lieu thereof; and (j) upon the occurrence of an event of default by Redeveloper under a loan from a Holder, including but not limited to the Existing Loan, any assignment of the interest of Redeveloper in this Agreement by Holder to any Qualified Transferee, upon written notice to the City by Existing Holder, and (k) any contract or agreement with respect to any of the foregoing exceptions.

8.03. Restraints Against Transfers. The Deeds and the Declaration shall contain a restriction against Transfers as set forth in Section 8.01, hereof and, in addition, shall provide that any attempted Transfer in violation of the restriction set forth in Section 8.01 hereof. Any attempted transfer in violation of the restrictions in Section 8.01 shall be an Event of Default and shall be null and void ab initio. The City shall be entitled to the ex parte issuance of an injunction restraining such transfer, and legal fees and related expenses of the City in connection with any such legal action. Upon the recording of the Deeds and the Declaration in the Office of the Monmouth County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens and shall remain in force and effect until such time as the Redeveloper receives a Certificate of Completion for the relevant Phase or subphase of the overall Redevelopment Project or the parties otherwise agree to in writing.

8.04 Conditions of Transfer. Except as otherwise provided in this Agreement, and except with respect to those Permitted Transfers set forth in Section 8.02 hereof, the City shall not grant consent to any transfer except under conditions that, in the City's reasonable judgment, shall protect the interests of the City. The City shall be entitled to require, as conditions to the approval of any Transfer provided for in Section 8.01 hereof that:

(a) Any proposed Transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper; and

(b) Any proposed Transferee, by instrument in writing reasonably satisfactory to the City and in recordable form, shall, for itself and its successors, Transferee(s) and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; and

(c) All instruments and other legal documents involved in effecting any Transfer shall be submitted to the City for review and approval, not to be unreasonably withheld, conditioned or delayed, and, if approved by the City, approval shall be indicated to the Redeveloper in writing; and

(d) Any Transfer approved by the City shall absolutely release the Redeveloper from any further obligation under this Agreement from and after the closing of the approved Transfer,

except as to any liability or obligation of the Redeveloper incurred prior to such Transfer and except as otherwise provided in this Agreement or in the written approval of the City.

(e) Redeveloper and its Transferees shall comply with any other reasonable conditions that the City may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

8.05 Mortgagee Protections. Nothing in this Article VIII is intended to limit those rights created pursuant to the provisions of Article X hereof.

8.06. The City shall not charge a fee in connection with, or as a condition to, its approval of a Transfer.

## **ARTICLE IX**

### **PROJECT FINANCING**

9.01. Financing and Equity Capital. The Redeveloper represents that it shall use its best efforts to obtain sufficient financing for all costs associated with the Redevelopment Project including contributions to the Millennium Pier Fund shown in Section 3.17 of this Agreement, on a Phase by Phase basis. The Redeveloper shall provide the City with evidence of financial capacity to meet its obligations shown in Section 3.17 of this Agreement. The Redeveloper represents that such financing may be a combination of debt financing, equity financing and an equity contribution of the Redeveloper. On or prior to the earlier to occur of (i) one hundred eighty (180) days after Redeveloper has obtained all Governmental Approvals with respect to the applicable Phase, or (ii) sixty (60) days prior to Commencement of Construction on such Phase of the Redevelopment Project, the Redeveloper shall submit to the City's consultants a financial package that the Redeveloper believes to be complete (the "Financial Package") describing the anticipated sources of funding for that Phase of the Redevelopment Project, including, but not limited to, a commitment or a "term sheet" for construction financing required for that Phase of the Redevelopment Project and a representation regarding any equity capital necessary for the Commencement of Construction of the Redevelopment Project on a Phase by Phase basis. If Redeveloper fails to obtain sufficient financing for all costs associated with the Redevelopment Project on a Phase by Phase basis and is therefore unable to proceed with the Project or particular Phase of the Project as provided herein, then, unless Redeveloper notifies City that its

failure to obtain financing is based upon adverse market conditions Force Majeure, subject to Section 15.26(e), herein, the City may terminate this Agreement, in which event neither party shall have any further rights or obligations under this Agreement except for those which expressly survive.

**ARTICLE X**  
**MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE**

10.01. Notice to City. Except for any Permitted Transfers set forth in Section 8.02 or, prior to the completion of each Phase or subphase of the Redevelopment Project, as certified by the Certificate of Completion issued by the City, and with respect to such Phase or subphase neither the Redeveloper nor any successor in interest to the Redevelopment Properties or any portion thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Redevelopment Properties, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Redevelopment Properties, except for the inchoate lien for real estate taxes and municipal obligations, liens granted to private lenders or other financing entities for the purpose of obtaining funds for the acquisition, construction and/or development of the Redevelopment Project. The Redeveloper or its successor in interest or Transferee(s) shall notify the City in advance of any financing, secured by mortgage or other lien instrument, which it proposes to enter into with respect to the Redevelopment Properties or any portion thereof (the mortgagee thereunder, a “Holder”; Existing Holder shall be deemed a “Holder” hereunder for all purposes under this Agreement so long as the Existing Loan remains outstanding) and, in any event, the Redeveloper shall promptly notify the City of any encumbrance or lien (other than liens for Impositions) that has been created on or attached to the Redevelopment Properties, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same. The provisions of this Section 10.01 shall not be deemed to grant to the City the right to approve or review the terms of any such proposed financing, or the identity of the Financial Institution(s) committing to provide such financing. This provision shall not apply to any mortgages, liens or other encumbrances placed upon any portion of the Redevelopment Properties by any bona-fide purchaser of a completed residential unit within the Redevelopment Project for which a

Certificate of Occupancy has been issued, or to any mortgage placed on the Abbotsford Properties by Existing Holder in connection with the financing of the acquisition by Redeveloper thereof.

10.02. Notice of Default to Redeveloper 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 Redevelopment Agreement, the City shall at the same time deliver to each Holder 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 Holder. Each such Holder shall (insofar as the rights of the City are concerned) have the right, at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Redevelopment Properties or applicable portion thereof with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession. In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) day period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

10.03. Guarantee of Construction or Completion.

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Redevelopment Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Redevelopment Project (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder first having expressly assumed the Redeveloper's obligations to the

City with respect to the Redevelopment Project by written agreement reasonably satisfactory to the City.

(b) Upon the occurrence of an event of default by Redeveloper under a loan from a Holder, including but not limited to the Existing Loan, Holder (or any affiliate or designee of Holder) may, upon written notice to City, but without the consent of City, (i) succeed to the interest of Redeveloper in this Agreement and (ii) further assign the interest of Redeveloper in this Agreement to a Qualified Transferee, such Qualified Transferee to enjoy all rights of a Holder hereunder.

(c) If a Holder forecloses its mortgage secured by the Redevelopment Project Site, or portion thereof, or takes title to the Redevelopment Project Site, or portion thereof, by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder shall have the option to either (i) sell the Redevelopment Project Site, or portion thereof, as applicable, to a responsible person or entity reasonably acceptable to City (with a Qualified Transferee being deemed acceptable), which person or entity shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with law, and/or (ii) itself assume the obligations of the Redeveloper under this Agreement in accordance with law and/or (iii) terminate this Agreement as to all or a portion of the Redevelopment Project Site. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the City shall not seek to enforce against the Holder or purchaser any of the remedies available to the City pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the person or entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Redevelopment Project in the manner provided in this Redevelopment Agreement, but subject to reasonable extensions of the dates set forth in the Phased Development Schedule, and shall submit evidence reasonably satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or person or entity assuming such obligations of the Redeveloper, properly completing the Redevelopment Project or relevant Phase, subphases or subcomponents thereof, shall be entitled, upon written request made to the City, to receive temporary Certificates of Occupancy and/or the individual Certificates of Occupancy for the individual residential unit or for commercial/retail space, the Certificate of Occupancy for any building or structures, the

overall Certificate(s) of Occupancy for the entire Project and the Certificate(s) of Completion for the overall Redevelopment Project or the relevant Phase, subphases or subcomponents thereof as hereinabove set forth in Section 4.05 hereof. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other person or entity assuming such obligations of the Redeveloper, to devote the Redevelopment Project Site, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement.

10.04. City's Option To Pay Mortgage Debt or Purchase Redevelopment Properties. In any case where subsequent to an Event of Default or breach by the Redeveloper (or any successor(s) in interest) under the terms of this Agreement, the Holder (a) has, but does not exercise, the option to construct or complete the Redevelopment Project or relevant Phase thereof relating to the Redevelopment Properties or portion thereof covered by its mortgage or to which such Holder has obtained title, and such Event of Default or breach continues for a period of ninety (90) days after the Holder has been notified or informed of the Event of Default or breach; or (b) undertakes construction or completion of the Redevelopment Project or relevant Phase thereof, but does not complete such construction within the period as agreed upon by the City and such Holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City to do so, the City shall (and every mortgage instrument made after the Effective Date and prior to completion of the Redevelopment Project with respect to the Redevelopment Properties by the Redeveloper or successor(s) in interest or Transferee(s) shall so provide) have the option of paying to the Holder the outstanding amount of the mortgage debt (together with all secured interest and other amounts due thereon, including, without limitation, any late charges, default interest, exit fees and post-petition interest) and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Redevelopment Properties or relevant Phase thereof has vested in such Holder by way of Foreclosure, the City shall be entitled, at its option, to a conveyance to the City of the Redevelopment Properties or relevant portion thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (i) the mortgage debt at the time of Foreclosure (less all appropriate credits, including those resulting from collection and

application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the Foreclosure, including reasonable attorney's fees and expenses; (iii) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the Redevelopment Properties or relevant portion thereof; (iv) the costs of any Improvements made by such Holder; (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence; and (vi) all other amounts due on the mortgage debt including, without limitation, accrued interest, any late charges, default interest, exit fees and post-petition interest.

10.05. City's Option To Cure Mortgage Default. In the event of Event of Default or breach prior to the completion of the Redevelopment Project or relevant Phase thereof by the Redeveloper, or any successor in interest, in or of any of its obligations under, and, to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Redevelopment Properties or portion thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the Agreement, operation of law, or otherwise, to reimbursement from the Redeveloper, its successor in interest or Transferee, as the case may be, of all costs and expenses incurred by the City in curing such Event of Default or breach and to a lien upon the Redevelopment Properties (or the relevant portion thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement, provided that any such lien shall be subject and subordinated always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages (including any lien contemplated because of advances yet to be made) on the Redevelopment Properties or relevant portion thereof authorized by the financing documents. The above provision shall not be applicable to the Existing Loan.

## ARTICLE XI

[INTENTIONALLY OMITTED]

**ARTICLE XII**  
**REPRESENTATIONS**

12.01. Representations of the Redeveloper. The Redeveloper hereby makes the following representations and covenants for the purpose of inducing the City to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof (such representations to survive the termination or expiration of this Agreement):

(a) It has the legal power, right and authority to enter into this Agreement and perform each of its undertakings herein set forth and as set forth in the Redevelopment Plan existing on the date of this Agreement;

(b) It is a duly organized and validly existing legal entity under the laws of the State of New Jersey and has duly adopted the necessary resolutions authorizing the execution and delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on its behalf;

(c) To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in its property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(d) The execution, delivery, or performance of this Agreement shall not constitute a violation of any partnership and/or stockholder agreement or of any agreement, mortgage, indenture, instrument or judgment, to which it is a party;

(e) It has not made any contributions that would violate provisions of the recently enacted Pay to Play legislation and guidelines including, N.J.S.A. 19:44A-20.2 et seq.;

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

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

(h) No indictment has been returned against any partner of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Agreement or otherwise.

12.02. Representations of City. The City hereby makes the following representations and covenants for the purpose of inducing Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof (such representations to survive the termination or expiration of this Agreement):

(a) The City is a municipal corporation duly organized and validly existing pursuant to the laws of the state of New Jersey and has the requisite power and authority to enter into this Agreement.

(b) This Agreement has been duly authorized by virtue of a certain Resolution, validly adopted and published by the City and, on or after the Effective Date, shall constitute a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other Applicable Law(s) affecting creditors' rights and subject to the availability of equitable remedies;

(c) The execution and delivery of this Agreement by the City and consummation of the transactions contemplated hereby does not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the City is a party or by which it is bound or any statute, rule, regulation, ordinance, order or decree in force as of the date hereof. In the event of a final non-appealable determination of a court of competent jurisdiction preventing the City from conveying any Abbottsford Avenue Properties or any portion thereof, to the Redeveloper, the Redeveloper's sole remedy is the right of termination of this Agreement, in its entirety or in part at the discretion of Redeveloper, and the return of any and all monies placed with the City as and for the payment of any Project Costs, together with any and all amounts escrowed, if any, in its entirety or in part, with the exception of escrowed funds already paid to the City.

(d) There is no pending, or to the best of the City's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay City or Redeveloper from performing their respective duties and obligations hereunder and/or (ii) questions the validity or prospective validity of the Original Development Agreement or this Agreement or any essential element on which the Original Development Agreement or this Agreement depends.

(e) The Original Development Agreement attached hereto as Exhibit A is a true and correct copy of the Original Development Agreement, together with all schedules and exhibits thereto; provided however, that the City acknowledges and agrees that (x) the City has been unable to locate Exhibits B, C, D and E to the Original Development Agreement and believes that said Exhibits have been lost, misfiled, misplaced or inadvertently destroyed and (y) Redeveloper shall have no obligations or liabilities under the Original Development Agreement pursuant to, or by reason of, any of said Exhibits, and none of said Exhibits shall cause or give rise to any obligations or liabilities on the part of Redeveloper under the Original Development Agreement.

(f) The City acknowledges and agrees that Redeveloper is not in default in the performance of any covenant, agreement, obligation or condition in the Original Development Agreement.

(g) (i) the Redeveloper has completed all of its obligations pursuant to Sections 2.01, 2.03, 3.01, 3.02, 4.01 and 4.02 of the Original Development Agreement, (ii) the "Certificate of Completion" contemplated under Section 3.05 of the Original Development Agreement was deemed to have been issued to Redeveloper by the City on January 18, 1991, (iii) the hotel and related project have been operational for more than one year, (iv) the consent of the City pursuant to Section 3.02(f) of the Original Development Agreement is no longer required for the sale of the fee ownership of the Properties (as defined in the Original Development Agreement) or any transfer of ownership thereof to Existing Holder (or its designee) by foreclosure or action in lieu thereof.

(h) The Long Branch City Council adopted a resolution dated as of 9/23/2000, approving the assignment, effective 10/23/2000, from Original Developer to Tiburon Ocean Place LLC all of Original Developer's then-existing right, title, interest, benefits, advantage to the Original Development Agreement, and all of its obligations and burdens thereunder, including, without limitation, all then-existing obligations to the City thereunder.

(i) The Long Branch City Council adopted a resolution on 3/14/2006 which approves the assignment from Tiburon Ocean Place LLC to Redeveloper of all of Tiburon Ocean Place LLC's then then-existing right, title, interest, benefits, advantage to the Original Development Agreement, and all of its obligations and burdens thereunder, including, without limitation, all then-existing obligations to the City thereunder.

(j) No contracts or other agreements, other than the Purchase and Sale Agreement between the City and the Redeveloper, dated 12/29/06, for the sale and purchase of the Abbottsford Avenue Properties, whether oral or written, have been entered into by City with respect to the subject matter of this Agreement.

(k) No official or employee of the City has any personal interest, direct or indirect, in this Agreement.

(l) The City has not engaged any broker, agent, finder or other third party in connection with the Original Development Agreement, this Agreement or the transactions described therein and herein, respectively.

**ARTICLE XIII**  
**RESERVED**

**ARTICLE XIV**  
**NOTICES AND DEMANDS**

14.01. Manner of Notice. A notice, demand, or other communication required under this Agreement by either party to the other shall be considered given and delivered if it is (i) dispatched by registered or certified mail, postage prepaid, return receipt requested, or (ii) delivered by hand delivering a copy thereof to the party courier, or (iii) by facsimile evidenced by confirmed receipt, at the addresses listed below for each party.

To the City:                    Business Administrator  
   City of Long Branch  
   Municipal Building  
   344 Broadway

Long Branch, New Jersey 07740

With a copy to: James Aaron, Esq.  
City Attorney  
c/o Ansell Zaro Grimm & Aaron  
1500 Lawrence Avenue  
CN 7807  
Ocean, New Jersey 07712

and to: Greenbaum, Rowe, Smith & Davis LLP  
99 Wood Avenue South  
Iselin, New Jersey 08830  
Attn: Robert Beckelman, Esq.

To Redeveloper: Ocean Place Development LLC  
c/o Tiburon Capital LLC  
160 Sansome Street, 11<sup>th</sup> Floor  
San Francisco, CA 94104

With a copy to: Orr Partners – OP, LLC  
3110 Fairview Park Drive, Suite 1100  
Falls Church, VA 22042

and to: DeCotiis, FitzPatrick, Cole & Wisler, LLP  
500 Frank W. Burr Boulevard  
Glenpointe Centre West  
Teaneck, New Jersey 07666  
Attn: Francis X. Regan, Esq.

To Existing Holder: Barclays Capital Real Estate Inc.  
200 Park Avenue  
New York, New York 10166  
Attn: Mark West

**ARTICLE XV**  
**MISCELLANEOUS**

15.01. Non-Liability of Officials and Employees of City. No member, official, employee, or consultants of City shall be personally liable to Redeveloper, or any successor in

interest, in the event of any default or breach by City, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement.

15.02. Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner, employee or consultant of Redeveloper shall be personally liable to City, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to City, or its successor, on any obligation under the terms of this Agreement.

15.03. Estoppel Certificate. Within thirty (30) days following written request therefor by a party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Redevelopment Properties, the other party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time and the giving of notice would result in a 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 a reasonable number of estoppel certificates may be requested per year. By executing this Agreement, the City acknowledges that, as of the Effective Date, the Original Development Agreement was in full force and effect and that there was no default or breach under the Original Development Agreement (nor any event which, with the passage of time and the giving of notice would have resulted in a default or breach under the Original Development Agreement).

15.04. No Brokerage Commissions. City and Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either City or Redeveloper, and City and Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

15.05. No Consideration For Redevelopment Agreement. Redeveloper warrants it has not paid or given, and shall not pay or give, any third person any money or other consideration in

connection with obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the City, any money or other consideration for or in connection with this Agreement.

15.06. Force Majeure.

(a) It is agreed that any deadline, obligation or term stated in this Agreement, including the deadline for receipt of the Governmental Approvals, Commencement of Construction or completion of the Redevelopment Project or any Phase thereof shall be extended if receipt of the Governmental Approvals or construction of the Redevelopment Project or such Phase thereof is prevented by the advent of an Event of Force Majeure or Tolling Event, as defined in Section 1.01, hereof in which case the applicable deadline, obligation or term shall be extended for the period of the enforced delay, provided that the party who seeks the benefit of this Section shall, within thirty (30) Days after the beginning of any such enforced delay, have notified the other party in writing of the cause(s) thereof, and shall have requested an extension for the period of the enforced delay.

(b) The performance or non-performance by the parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is/are the result of a Tolling Event or an Event of Force Majeure; provided, however, that the Tolling Event or the Event of Force Majeure was not the result of any unlawful action or non-action of the party relying on such Tolling Event or Event of Force Majeure as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility where either party alleges that as a result of a Tolling Event or an Event of Force Majeure, the aggrieved party is unable to perform or not perform any aspect of this Agreement, the aggrieved party shall send proper written notice to the other identifying the Tolling Event or the Event of Force Majeure alleged to have occurred.

15.07. Right of Entry For Utility Service. The City reserves for itself and any public utility company, as may be appropriate, the right to enter upon the Redevelopment Properties or any portion thereof at any reasonable time for the purpose of reconstructing, maintaining,

repairing, or servicing the public utilities located within the Redevelopment Properties boundary lines.

15.08. Redeveloper Not To Construct Over Utility Easements. The Redeveloper shall not construct any of the Improvements on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 15.07 hereof, unless such construction is provided for in such easement or has been approved by the City. If approval for such construction is requested by the Redeveloper, the City shall use its commercially reasonable efforts to assure that such approval shall not be unreasonably withheld, conditioned or delayed.

15.09. Maintenance. The Redeveloper shall be responsible for the maintenance and security of the Redevelopment Properties subject to the terms of this Agreement subsequent to its acquisition of title to same and until such time as the Redeveloper no longer owns or leases the Redevelopment Properties or portions thereof.

15.10. Neighboring Properties. If applicable, the Redeveloper shall, pursuant to Applicable Law(s), cooperate with the City in rendering adjoining properties compatible with the Redevelopment Project.

15.11. Equal Employment Opportunity. The Redeveloper agrees that during the construction of the Improvements:

(a) Pursuant to Applicable Law, the Redeveloper shall not discriminate against any employee or applicant for employment because of, race, color, religion, sex, or national origin. To the extent reasonably possible, the Redeveloper shall take affirmative action to insure 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. The 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 which are consistent therewith.

(b) To the extent required by Applicable Law, the Redeveloper shall, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Redeveloper shall send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper shall comply with all provisions of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), and all rules, regulations, and relevant orders of the Secretary of Labor.

(e) To the extent reasonably possible, subcontractors and suppliers to the Redevelopment Project shall include qualified and certified minority enterprises.

(f) The obligations in this Section 15.11 shall be directly binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Redeveloper shall so provide.

(g) Redeveloper shall not be obligated to utilize union labor in relation to the Project other than for concrete foundations, piling or bulkheading/shoring work, within the trade jurisdiction of Dockbuilders Local 1456, which work shall be performed by a contractor that is signatory to a collective bargaining agreement with Dockbuilders Local 1456 (or the District Council of Carpenters for New York City and Vicinity, UBCJA), directly or by membership in an appropriate employer association. Notwithstanding the preceding sentence, in the event , after Redeveloper using its best good-faith efforts, including consultation with representatives of

Dockbuilders Local 1456 to discuss scheduling, competitive bids and any other related issues, no union contractor is available to bid the work for the Project or no union contractor does bid the work for the Project and such unavailability of a union contractor would unreasonably delay or prevent the work from being completed, Redeveloper shall be permitted to utilize a non-union contractor for such work.

15.12. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes the prior or contemporaneous writings, discussions, or agreements between the parties with respect to the subject matter hereof.

15.13. Titles of Articles and Sections/Headings. Any headings or titles of the several Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. None of the headings or titles of Articles and Sections are intended to limit or define the contents of the Sections and Articles.

15.14. Counterparts. Should this Agreement be executed in counterparts, each shall constitute one and the same instrument.

15.15. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

15.16. Modification and Amendment of Agreement. No modification, amendment or change of this Agreement shall be valid unless the same is in writing, duly authorized and signed by all of the parties to this Agreement..

15.17. Governing Law: This Agreement shall be governed by and constructed in accordance with applicable laws of the State of New Jersey, without regard to conflict of laws.

15.18. Limitation on Liability: Notwithstanding anything to the contrary contained in this Agreement, any liability or liabilities, requirement(s), commitment(s),

obligation(s) and/or responsibility or responsibilities of any type or kind whatsoever (whether actual, contingent, consequential or otherwise) (hereinafter referred to collectively as “Liability”) of the Redeveloper referenced in, resulting from or relating in any way to this Agreement shall be those of the Redeveloper or any successor assuming an interest in the Redevelopment Project only. Nothing in this Agreement, arising out of, or related in any way to this Agreement or the Redevelopment Project shall, in any way, give the City or any other Person recourse to, or be construed to impose, directly or indirectly, any Liability on any Person other than the Redeveloper.

15.19. Lender Changes: If the Redeveloper’s Financial Institution(s) requires modifications of the terms of this Agreement, the City shall reasonably cooperate with the Redeveloper in approving such modifications, so long as such modification, does not materially and substantially change the rights or obligations of the City as set forth in this Agreement and, in the opinion of the City, do not materially impair the security of the City or render the completion of the entire Redevelopment Project in jeopardy.

15.20. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of any Transferee(s), assignee(s) and/or successor(s) of the parties hereto, and their heir(s), executor(s), and administrator(s).

15.21. Drafting Ambiguities; Interpretation: In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one (1) of the parties drafted this Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

15.22. Waivers and Amendments in Writing: All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and by the Redeveloper, respectively. The waiver by either party of an event of default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach.

15.23. Conflict of Interest: No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

15.24. Withholding of Approvals and Consents to Extensions: All approvals, consents to requests for extensions of time references required pursuant to the Agreement and acceptances required to be given or made by any party to this Agreement or on behalf of either party hereto, shall not be unreasonably withheld, denied or delayed, unless specifically stated otherwise.

15.25. “Recitals” Incorporated; “Definitions” Incorporated: The “Recitals” appearing in the “Preamble” of this Agreement are hereby incorporated by reference into this Agreement, as if set forth in full. The “Definitions” and the “Definitions” section contained within this Agreement are hereby incorporated by reference into this Agreement, as if set forth in full.

15.26 Arbitration. Any controversy or claim arising out of this Agreement shall, at the option of either party, be resolved by arbitration in accordance with this Section. The award rendered by the arbitrator, or arbitrators, may be entered as a final judgment in any court having jurisdiction.

(a) The party desiring arbitration shall give notice to that effect to the other party and shall in such notice appoint a retired Judge of the New Jersey Superior Court or a retired Justice of the Supreme Court of New Jersey as arbitrator. Within ten (10) days, the other party by notice to the original party shall either agree to the arbitrator selected by the original party to act as the sole arbitrator (in which event such arbitrator shall be the sole arbitrator) or appoint a second retired Judge of the New Jersey Superior Court or a retired Justice of the Supreme Court of New Jersey as arbitrator. If a second arbitrator is appointed, the arbitrators thus appointed shall appoint a third retired Judge of the New Jersey Superior Court or a retired Justice of the Supreme Court of New Jersey and the arbitration shall be conducted by all three such parties; provided, however, that if the initial two arbitrators shall be unable to agree on a third arbitrator within ten (10) days after the appointment of the second arbitrator, they shall give written notice to the parties of such failure to agree, and, if

the parties fail to agree upon the selection of such third arbitrator within ten (10) days after such notice from the initial two arbitrators, then within five (5) days thereafter either of the parties upon notice to the other may apply to the Assignment Judge of the Superior Court of Monmouth County for a court appointment of a third arbitrator, who shall be a retired Judge of the New Jersey Superior Court or a retired Justice of the Supreme Court of New Jersey. Notwithstanding anything contained herein to the contrary, with respect to any dispute involving a failure of the parties to agree upon the Site Plan in accordance with Section 3.06 of this Agreement, the only issue in which the arbitrator(s) may render a decision is whether the parties have proceeded in good faith to seek to agree upon such Site Plan.

(b) The arbitration shall be conducted, to the extent consistent with this Section, in accordance with the then prevailing rules of the American Arbitration Association (or any organization successor thereto). The arbitrator(s) shall render its/their decision and award by majority decision within thirty (30) days after (i) the election of the parties to proceed with a single arbitrator as aforesaid, if the dispute is to be determined by a single arbitrator, or (ii) appointment of the third arbitrator, if the dispute is to be determined by three arbitrators. If there are three arbitrators, the decision shall be made by majority opinion. The arbitrators' decision and award shall be in writing, shall contain findings of fact and conclusions of law, and shall be final and conclusive on the parties, and counterpart copies thereof shall be delivered to each of the parties. Judgment may be had on the decision and award of the arbitrator(s) so rendered in any court of competent jurisdiction. In no event may any arbitration award include consequential, punitive, treble or exemplary damages. Without limiting the foregoing, any arbitrator(s) selected pursuant to this Section 15.26 shall have the power, in addition to the other powers stated herein, to grant equitable relief, including, but not limited to, stays, injunctions and interim orders.

(c) Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by such party and the fees and expenses of the third arbitrator and all other expenses of the arbitration (other than the fees and disbursement of attorneys or witnesses for each party) shall be borne by the parties equally. If the dispute is heard before a single arbitrator, the fees and expenses of the arbitrator shall be split evenly between the parties.

(d) The provision of this Section 15.26 shall survive the issuance of a Certificate of Completion.

(e) Adverse Market Condition Force Majeure In the event the Redeveloper claims Force Majeure based upon adverse market conditions and the City objects to such claim by written notice to Redeveloper as provided in this Section 15.26(e) , then, in that event, the above provisions (a) through (d) shall not apply, but the matter shall immediately be sent to arbitration for final resolution as provided in this Section 15.26(e) by a retired Justice of the Supreme Court of the State of New Jersey with said binding arbitration to be held within ninety (90) days of the decision by the action of the City of Long Branch. The parties shall mutually select an arbitrator from the pool of retired Supreme Court Justices within ten (10) days of the date of receipt by Redeveloper of written notice from the City of its objection to the Redeveloper's claim of Force Majeure based upon adverse market conditions and the City's stated reasons for such objection. In the event the parties can not select an arbitrator within ten (10) days, then each party shall select a retired Judge(s) from the New Jersey Courts System and the Judge(s) shall select a retired Justice of the Supreme Court, or, if one is not available, a retired Judge from the Appellate Division, to handle the arbitration. The arbitrator shall conduct the arbitration within sixty (60) days of the date of the arbitrator's appointment. All costs of the arbitration shall be born equally between the parties. The powers of the arbitrator shall be limited to a finding that the Redeveloper's claim of Force Majeure based on adverse market conditions was either reasonable or unreasonable based on the facts and circumstances as presented by the parties, and in the event the arbitrator finds that such claim of Force Majeure based on adverse market conditions was unreasonable, then the arbitrator shall equitably determine, based upon the facts and circumstances as presented, the methodology and timing for the Project (Phase) to resume. The decision of the arbitrator shall be deemed final and non-appealable. The arbitrator shall have no power to declare a default under the terms of the Agreement, nor shall the arbitrator be empowered to order any amendments to the Project or Plans, except with respect to timing and phasing. The arbitration provision in this Section 15.26(e) is applicable only to adverse market conditions and no other events of Force Majeure.

15.27 Short Form Agreement. A short form memorandum of this Agreement, and any modifications thereof or additions thereto, in the such form attached hereto as Exhibit I may be

duly recorded by Redeveloper in the Book of Deeds of the County of Monmouth and the cost of such recordation and the cost of any and all federal revenue stamps, which legally must be attached to any of said papers, shall be paid by the Redeveloper.

**THE REMAINDER OF THIS PAGE  
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**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and on its behalf by the Mayor, and its seal to be hereunto duly affixed and attested by its Secretary has caused this Agreement to be duly executed in its name and on its behalf by \_\_\_\_\_, and the Redeveloper has caused this Agreement to be duly executed in its name and on its behalf by the President of its Manager, TCL New Jersey Corp., on or as of the day first above written.

ATTEST:

CITY OF LONG BRANCH

\_\_\_\_\_

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

City Clerk

WITNESS:

OCEAN PLACE DEVELOPMENT LLC

By: TCL New Jersey Corp., its Manager

\_\_\_\_\_

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

John F. Dixon, President

WITH RESPECT TO SECTION 3.11 ONLY, AS SPONSORS:

WITNESS:

TIBURON CAPITAL LLC

\_\_\_\_\_

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

John F. Dixon, Member

WITNESS:

ORR PARTNERS, LLC

\_\_\_\_\_

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

David L. Orr, Manager

EXHIBIT A

“Disposition and Development Agreement between the Mayor and Council of the City of Long Branch, New Jersey; The Long Branch Redevelopment Agency and Gem Holding Company, Inc.” dated 03/26/1985

[See attached.]

EXHIBIT B  
Intentionally Deleted

EXHIBIT C  
Concept Plan

[See attached.]

EXHIBIT D

Phases of the Redevelopment Project

| <b>Phase</b> | <b>Description</b>   |
|--------------|--|
| <b>I</b>     | <ul style="list-style-type: none"><li>● Existing Hotel - Renovate Lobby and Spa Facilities</li><li>● Condo-hotel Tower - 200 units</li><li>● Residential condominiums - 52 units</li><li>● Retail – 42,084 sf</li><li>● 302 new structured Parking Spaces</li></ul>                            |
| <b>II</b>    | <ul style="list-style-type: none"><li>● Renovate existing Hotel interior &amp; exterior (254 rms)</li><li>● Add 60 new hotel rooms</li><li>● Retail – 22,182 sf<ul style="list-style-type: none"><li>● Demolish existing Conference Center</li><li>● New Conference Center</li></ul></li></ul> |
| <b>III</b>   | <ul style="list-style-type: none"><li>● 1,625 new structured Parking spaces</li><li>● Residential condominiums - 67 units</li><li>● Retail/Entertainment – 150,062,sf</li><li>● Office Space – 103,747 sf</li></ul>  |
| <b>IV</b>    | <ul style="list-style-type: none"><li>● Residential condominiums - 156 units</li><li>● Retail 36,378 sf</li><li>● 329 new structured Parking Spaces</li></ul>  |

EXHIBIT E

Shared Parking Analysis

EXHIBIT F

[INTENTIONALLY OMITTED]

EXHIBIT G

[INTENTIONALLY OMITTED]

EXHIBIT H  
Intentionally Deleted

## EXHIBIT I

### Short Form Redevelopment Agreement

#### **SHORT FORM REDEVELOPMENT AGREEMENT**

**SHORT FORM REDEVELOPMENT AGREEMENT**, made as of the \_\_\_ day of \_\_\_\_\_, 2007, by and between **CITY OF LONG BRANCH**, a body corporate and body politic of the State of New Jersey (which, together with any successor public body or officer hereinafter designated by or pursuant to law, is hereinafter referred to as the "City"), located at 344 Broadway, Long Branch, New Jersey 07740 and **OCEAN PLACE DEVELOPMENT LLC** (hereinafter referred to as the "Redeveloper," as such term is further defined herein) with a mailing address of 160 Sansome Street, 11<sup>th</sup> Floor, San Francisco, California 94104.

#### **RECITALS**

**WHEREAS**, in 1985, the City, the Long Branch Redevelopment Agency (the "Agency") and GEM Holding Company, Inc. entered into a "Disposition and Development Agreement Between the Mayor and Council of the City of Long Branch, New Jersey; The Long Branch Redevelopment Agency and GEM Holding Company, Inc." (referred to herein as the "Original Development Agreement") which provided for the initial construction of a hotel consisting of 250 rooms with 25,000 square feet of retail space (the "Original Project") and granted GEM Holding Company, Inc. (and its successors and assigns) the right to further develop hotel and retail facilities consistent with the Zoning Ordinance in place at that time; provided, however, that the City acknowledges and agree that (x) the City and Redeveloper have been unable to locate Exhibits B, C, D and E to the Original Development Agreement and believe that said Exhibits have been lost, misfiled, misplaced or inadvertently destroyed, and (y) the Redeveloper shall have no obligations or liabilities under the Original Development Agreement pursuant to, or by reason of, any of said Exhibits, and none of said Exhibits shall cause or give rise to any obligations or liabilities on the part of Redeveloper under the Original Development Agreement; and

**WHEREAS**, the Original Project is located on property shown as Lot 16.01 in Block 294 on the Tax Maps of the City (the “Original Project Property”); and

**WHEREAS**, pursuant to a resolution adopted 9/23/2000 by the City and an agreement between Gem Holding Company, Inc. and Tiburon Ocean Place LLC, all right, title, interest and benefit in the Original Development Agreement and all of the obligations and burdens of GEM Holding Company, Inc. contained therein were assigned to, and accepted and assumed by Tiburon Ocean Place LLC effective 10/23/2000; and

**WHEREAS**, pursuant to a resolution adopted 3/14/2006 by the City and an agreement between Tiburon Ocean Place LLC and the Redeveloper, all right, title, interest and benefit in the Original Development Agreement and all of the obligations and burdens of GEM Holding Company, Inc. contained therein were assigned to, and accepted and assumed by, the Redeveloper effective 4/25/2006; and

**WHEREAS**, the Redeveloper is the current owner of the Original Project Property; and

**WHEREAS**, the Original Project was completed in accordance with the terms of the Original Development Agreement pursuant to a Certificate of Completion issued by the City on 1/18/1991; and

**WHEREAS**, the City acquired certain properties adjoining the Original Project Property and situated along Abbottsford Avenue, in particular Lots 1, 2, 4, 5, 7, 8 and 9 in Block 293 and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in Block 294 as shown on the Tax Maps of the City (each individually an “Abbottsford Avenue Property” and collectively, the “Abbottsford Avenue Properties”); and

**WHEREAS**, the Original Development Agreement provides for the purchase of the Abbottsford Avenue Properties by the Redeveloper from the City; and

**WHEREAS**, the Redeveloper and the City entered into that certain Purchase and Sale Agreement dated 12/29/2006 pursuant to which the City agreed to sell, and the Redeveloper purchased on March 30, 2007, the Abbottsford Avenue Properties; and

**WHEREAS**, the Original Development Agreement includes the right of GEM Holding Company, Inc. to further develop and expand the hotel to 400 rooms with 40,000 square feet of retail space (which right is deemed incorporated herein), all to be constructed on the Original Project Property and the Abbottsford Avenue Properties (herein, together referred to as the “Redevelopment Properties”); and

**WHEREAS**, City acknowledges that Redeveloper is not in default in the performance of any covenant, agreement, obligation or condition contained in the Original Development Agreement, and

**WHEREAS**, the Redevelopment Properties are now subject to the requirements of the Oceanfront-Broadway Redevelopment Plan, which was adopted by the City in May 1996 (the “Redevelopment Plan”), after the execution of the Original Development Agreement; and

**WHEREAS**, pursuant to the Redevelopment Plan, the Redevelopment Properties are located in the Long Branch Oceanfront Redevelopment Zone (the “Redevelopment Zone”); and

**WHEREAS**, the Redevelopment Plan is supplemented by the Design Guidelines Handbook, which provides a common framework of site utilization and organization that meet with the City’s objectives for the Redevelopment Zone; and

**WHEREAS**, the Redevelopment Properties are located in the Hotel Campus, one of six redevelopment sectors identified in the Redevelopment Plan and the Design Guidelines Handbook; and

**WHEREAS**, the Design Guidelines Handbook 5 outlines the development rules for the Hotel Campus, permitting the development of residential and office uses, as well as the hotel and retail uses as permitted in the Original Development Agreement; and

**WHEREAS**, the City seeks to encourage high quality, mixed-use development on the Redevelopment Properties, and such development shall make an important contribution to the City; and

**WHEREAS**, the Redeveloper has prepared and submitted to the City a plan for the phased development of a mixed use (hotel/office/retail/residential/parking) project (such plan, as approved by the City in accordance with the terms and conditions set forth in this Agreement, and as further defined in Section 1.01 hereof, being the “Redevelopment Project”) on the Redevelopment Properties, to be completed in Phases; and

**WHEREAS**, the present state of the Redevelopment Project has been reviewed and found consistent with the City’s goals and objectives for redeveloping the Redevelopment Zone and with the Redevelopment Plan; and

**WHEREAS**, after review and consideration of the proposed Redevelopment Project, the City has determined that the proposal by the Redeveloper best serves the overall interests of the

City in terms of financial, social and land use benefits to be derived by the City within an acceptable time frame for development and completion of the Redevelopment Project; and

**WHEREAS**, the City has determined that it is in the best interest of the City and its residents for the City to enter into this Agreement with the Redeveloper for the purposes of setting forth in greater detail each party's rights and obligations in connection with the redevelopment and construction of the Redevelopment Project and to amend and restate the Original Agreement; and

**WHEREAS**, the City and the Redeveloper acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, it is agreed upon as of the date set forth above by the City and the Redeveloper, as follows:

1. The City and the Redeveloper have entered into an agreement for the redevelopment of the Project Site, which agreement sets forth all of the terms, covenants, conditions, representations and agreements of the parties and is entitled "Amended and Restated Redevelopment Agreement by and between Ocean Place Development LLC and City of Long Branch" dated as of \_\_\_\_\_, 2007 (the "Redevelopment Agreement").
2. The Redevelopment Agreement contains covenants which Redeveloper is obligated to comply with, including, but not limited to, each of the covenants set forth in N.J.S.A. 40A:12A-9.
3. This Short Form Redevelopment Agreement is executed for the purpose of giving notice of the existence of the Redevelopment Agreement and the terms thereof. Reference is made to the Redevelopment Agreement for the full description of the rights and duties of the City and the Redeveloper, and this Short Form Redevelopment Agreement shall in no way affect or modify any of the terms and conditions of the Redevelopment Agreement, all of which remain in full force and effect, or the interpretation of rights and duties of the City and Redeveloper thereunder. A complete copy of the Redevelopment Agreement is on file with the City Clerk of

the City of Long Branch at the Municipal Building, 344 Broadway, Long Branch, New Jersey 07740.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the City and the Redeveloper have caused this Short Form Redevelopment Agreement to be duly executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**WITNESS:**

**THE CITY OF LONG BRANCH**

\_\_\_\_\_  
City Clerk

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

**WITNESS:**

**OCEAN PLACE DEVELOPMENT LLC  
By: TCL New Jersey Corp., its Manager**

\_\_\_\_\_

By: \_\_\_\_\_  
John F. Dixon, President

STATE OF NEW JERSEY

SS:

COUNTY OF MONMOUTH

I CERTIFY that on \_\_\_\_\_, 2007

I am an attorney-at-law or notary public of the State of New Jersey an officer authorized to take acknowledgements and proofs in this State. On \_\_\_\_\_, 2007, \_\_\_\_\_ (from now on called 'the "Witness"') appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the City Clerk of the City of Long Branch, New Jersey, a municipal corporation chartered under the laws of the State of New Jersey, and named in this document.
2. \_\_\_\_\_, the officer who signed this Document, is Mayor of the City of Long Branch.
3. The making, signing, sealing and delivery of this document, have been duly authorized by a proper resolution of the City Council of the City of Long Branch.
4. The Witness knows the corporate seal of the City of Long Branch. The seal affixed to this document is the corporate seal of the City of Long Branch. The Mayor signed and delivered this Document as and for the voluntary act and deed of the City of Long Branch. All this was done in the presence of the Witness who signed this document as the attesting witness. The Witness signs this proof to attest to the truth of these facts.

\_\_\_\_\_  
, City Clerk

Sworn to and signed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_



STATE OF CALIFORNIA )  
 ) SS:  
COUNTY OF MARIN )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared John F. Dixon, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**AFTER RECORDING, RETURN TO:**  
Robert Beckelman, Esq.  
Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus I  
P.O. Box 5600  
Woodbridge, New Jersey 07095