

CITY OF ASBURY PARK

AMENDED AND RESTATED REDEVELOPER AND LAND DISPOSITION AGREEMENT

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COUNCILWOMAN CATHERINE M. MELLINA**

DATE: October 28, 2002

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TABLE OF CONTENTS

Background.....	9
Article I.....	13
1.1.....	Defined Terms:
.....	13
Article 2.....	25
2.1 Duties of Master Developer.....	27
2.2. Duties of City.....	29
2.3 The Project.....	32
Article 3.....	34
3.1 Priority Portions of Project.....	34
3.2 Second Phase- Lake Avenue Properties.....	35
3.3 Pavilion Properties.....	35
3.4- Convention Hall/Paramount Theatre.....	37
3.5. Casino Property and Power Plant Property.....	39
3.6 Marine Grill Properties.....	40
3.7 Intentionally Omitted.....	41
3.8 C.O.P. After Acquired.....	41
3.9 The Boardwalk.....	41
3.9.1 Arthur Pryor Bandshell.....	44
3.10 Bradley Park Reconstruction.....	44
3.11 Emergency Services Building.....	45
3.12 Other Acquired Properties.....	45
3.13 Beach Clubs.....	45
3.14 Dune restoration.....	46
3.15 6 th Avenue Opening.....	47
3.16 Conditional Properties.....	47
3.16.1 The Palace Property.....	47
3.16.2 Stone Pony.....	49
3.16.3 "Bergh Street" Properties.....	49
3.16.4 The Empress Hotel.....	49
3.16.5 Charms Building.....	50
3.16.6 Kingsley Avenue Retail.....	50
3.17 Tenancies.....	51
3.18 The Master Developer (Asbury Partners, LLC).....	51
Article 4.....	51
4.1 Definition of C.O.P. Properties.....	52
4.2.....	COP Sale Agreements
.....	53
4.3.....	COP Net Lease
.....	54
4.4.....	Impositions/Taxes.
.....	55

4.5.....Provisions Not Merged with Deed.	55
.....	56
Article 5.....	56
5.1 Access.....	56
Article 6.....	57
6.1. December, 2001 Resolution.....	57
6.2. Schedule of Properties Eligible for Acquisition.....	58
Article 7.....	58
7.1 Review of Existing Infrastructure.....	58
7.11 Grants and Loans.....	64
7.12 Sewer Treatment Capacity.....	65
7.12.1 Future Sanitary Sewer Capacity.....	66
7.13 Sewerage Treatment Plant Upgrade.....	68
Article 8.....	69
8.1 Abandonment, Notices.....	69
8.2 Prior to Conveyance of Property.....	70
8.3 Default After Conveyance to Developer.....	71
8.4 Default Rights and Remedies.....	75
8.5 Notice to Mortgagee.....	76
8.6.....Mortgagee's Right to Cure Default and Assume Obligations.....	77
8.7 Rights of Mortgagees.....	78
8.8.....Bankruptcy of Master Developer.	79
Article 9.....	81
9.1.....Completion of Projects (and Phases thereof)	81
9.2..Certificate of Occupancy and Certificate of Completion	82
9.3.....After Completion of a Project (or a Phase thereof).	83
9.4.....Effect of Certificate of Completion	84
9.5.....Estoppel Certificates (Prior to Certificate of Completion).....	85
Article 10.....	86
10.1 Tax Abatement General.....	86
10.2 Long-Term Tax Exemption (N.J.S.A. 40A: 20-1 et seq.)	87
Article 11.....	88
11.1 Jurisdiction.....	88
11.2 Planning Board.....	89
11.3 Technical Review Committee (T.R.C.).....	89
11.4 Applications.....	90

Article 12	91
12.1 Jurisdiction.....	91
12.2 Intentionally Deleted.....	91
Article 13	91
13.2 Construction and Business Related Workforce	93
Article 14	94
14.1..... Special Improvement District Legislation- N.J.S.A. 40:56-65 et seq.	94
Article 15	95
15.1 Fees.....	95
Article 16	96
16.1 Challenge of Plan Adoption.....	96
Article 17	97
17.0 Arbitration Procedures.....	97
17.1 Agreement Provisions	99
17.2 No Condemnation/Without Consent.....	101
17.3 Cooperation by City.....	102
17.4 City Consultants Reports and Services.....	102
17.5 Waivers.....	103
17.6 Commissions.....	103
17.7 No Significance of Party Drafting.....	103
17.8 Recordation.....	104
17.9 Notices.....	104
17.10 Inability to Perform.....	104
Exhibits	108

**AMENDED AND RESTATED REDEVELOPER
AND LAND DISPOSITION AGREEMENT**

This Amended Restated Redeveloper and Land Disposition Agreement dated this ~~08.28~~ day of ~~October~~, 2002 entered into by and between the CITY OF ASBURY PARK ("CITY") a Municipal Corporation of the State of New Jersey and ASBURY PARTNERS, L.L.C., a New Jersey Limited Liability Company ("Master Developer").

City shall have an address at Asbury Park Municipal Building, One Municipal Plaza, Asbury Park, New Jersey 07712.

Master Developer shall have an address at 511 Ocean Avenue, P.O. Box 80, Lakewood, New Jersey 08701.

WITNESSETH

WHEREAS, on April 2, 1986, the City entered into a Redeveloper Agreement and Land Disposition Agreement ("the Redeveloper Agreement") with Carabetta/Vaccaro Developers ("Carabetta") a New Jersey Limited Partnership, which Agreement was assigned by Carabetta to Ocean Mile Development Group ("OCEAN MILE"); and

WHEREAS, in addition to the redevelopment rights acquired by said assignment, Ocean Mile owned certain real properties within the Asbury Park Waterfront Redevelopment Area and

Rehabilitation District, as defined in the Redevelopment Agreement, and

WHEREAS, Ocean Mile was a limited partnership affiliated with Carabetta Enterprises, Inc. and Joseph F. Carabetta (collectively "Carabetta"), and

WHEREAS, on May 21, 1991, the City and Ocean Mile executed an extensive Modification of the Redeveloper Agreement ("the Modification"); and

WHEREAS, Carabetta filed a petition for relief under Chapter 11 of the Bankruptcy Code on June 8, 1992 commencing a bankruptcy case in the United States Bankruptcy Court for the District of Connecticut Bridgeport Division, ("the Bankruptcy Proceeding") and,

WHEREAS, the City and Carabetta were engaged in various legal actions and disputes pertaining to the Redevelopment Agreement and Modification, both prior to, during and subsequent to the Bankruptcy Proceeding

WHEREAS, on September 19, 1997, the Bankruptcy Court entered an Order Confirming the Third Amended Plan of Reorganization for Carabetta Enterprises, Inc., and,

WHEREAS, since the commencement of the Bankruptcy Proceeding and since the confirmation of the Third Amended Plan of Reorganization, the Bankruptcy Court has from time to time

exercised jurisdiction with respect to matters pertaining to assets owned by Ocean Mile, and

WHEREAS, M.D. SASS Municipal Finance Partners III L.P., a Delaware Limited Partnership ("SASS") and Ocean Front Acquisitions, L.L.C., a New Jersey Limited Liability Company ("OCEAN FRONT") Sass and Ocean Front (hereinafter collectively referred to as the "predecessor companies") petitioned the Bankruptcy Court and State Court,

WHEREAS, the City and Master Developer's predecessor companies entered into a Memorandum of Understanding ("the M.O.U.") on August 13, 2001; and

WHEREAS, the Bankruptcy Court entered a "Consent Order Authorizing and Approving the Sale of Real Properties and Redevelopment Rights Owned by Ocean Mile Development Group Pursuant to Debtor's Confirmed Plan of Reorganization" (the "Consent Order"), which Consent Order approved and authorized certain transactions between Ocean Mile, the City of Asbury Park, Ocean Front and SASS providing for the conveyance of the real estate and redevelopment rights owned by Ocean Mile to Ocean Front and for the conveyance of certain tax sale certificates by the City to Sass; and

WHEREAS, the Consent Order also authorized the transactions set forth in the Memorandum of Understanding (the "MOU"), as

same may be amended from time to time, which designates Ocean Front and SASS (the predecessor companies) as Master Developer for the Redevelopment Area, (except for the Rehabilitation/Renovation Area) and

WHEREAS, the Master Developer's predecessor companies, Ocean Front and Sass consummated the transactions contemplated by the Consent Order including but not limited to, the acquisition of the subject real estate and the acquisition of the tax sale certificates, and

WHEREAS, said predecessor companies assigned their rights and interests to Master Developer.

WHEREAS, amongst other things the M.O.U. reinstated all development rights to Master Developer as assigned by Carabetta and provided for the City and Master Developer to collaborate and produce an amended redevelopment plan (the "Plan IV") and a new redevelopment agreement ("Amended Agreement") by December 28, 2001, a draft of which was timely filed; and

WHEREAS, since the execution of said M.O.U., Master Developer and the City have retained experts in Planning, Redevelopment, Law, Engineering, Environmental, Design, Grantsmanship, Real Estate and Public Relations in furtherance of the Development and Master Developer has, in addition to the purchase of the Carabetta properties, expended substantial

additional sums to acquire properties and clear and demolish structures in the Redevelopment Area; and

WHEREAS, the parties agree and acknowledge that the Master Developer has succeeded to and been assigned all rights, title and interest in and to the predecessor companies; and

WHEREAS, the City has adopted the Waterfront Redevelopment Plan which was submitted for review by the City and introduced by Ordinance dated May 15, 2002 and adopted on June 5, 2002.

WHEREAS, the City and Master Developer wish to enter into this Amended and Restated Redeveloper and Land Disposition Agreement to supercede and replace any and all other agreements.

NOW, THEREFORE, the parties hereby agree as follows,

Background

1. The Mayor and City Council are acting as a redevelopment agency under the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) In 1984, the City found portions of the area bound by Grand Avenue to the West, Deal Lake to the North, Wesley Lake to the South and the Ocean to the East to be a "Blighted Area" pursuant to N.J.S.A. 40:55C-21.1 et seq. and portions to be an Area in Need of Rehabilitation pursuant to N.J.S.A. 40:55C-17 and on November 7, 1984 adopted the Asbury Park Waterfront Redevelopment Plan (Plan I). On January 7, 1987,

the City amended said Plan ("Plan II") and on April 3, 1991, it amended the Plan again ("Plan III").

2. On April 2, 1986, the City entered into a Redeveloper's Agreement with Carabetta to undertake the development/redevelopment called for in "Plan I". The Redeveloper Agreement provided for, amongst other things, a market study, priority areas of development (Parcels A2, C8, D3, D5, and E2), submissions to a Waterfront Management Board, and strict time frames for other submissions. There were "five phases" of development with specific dates of commencement and completion. Failure to comply with the dates was a default under the Redeveloper Agreement. Carabetta was to lease or purchase certain properties owned by the City, including the Convention Hall/Paramount Theatre (part of Phase I).

The continuance of additional phases was contingent on successful completion of the earlier phase. The parties agreed to utilize tax abatement as a means of "writing down" the cost of land acquisition. Acquisition by eminent domain was to be accomplished only with proof of financial commitment for construction. Carabetta was to be the only Developer with strict prohibition and limits on speculation and transfer or assignment. In the event Carabetta acquired title to property from the City (whether private or otherwise) and failed to complete the improvements thereto the City could revest title

subject to any mortgages and then make a good faith effort to resell the property.

3. By May of 1991, Carabetta assigned its interest in the Redeveloper Agreement to Ocean Mile, which applied for a change of the Redevelopment Plan (Plan III) and negotiated the Modification. The Modification recognized that the Redeveloper Agreement was in full force and effect and that the housing market and demand had fluctuated and diminished. It also recognized the start of some construction and repairs on Convention Hall as well as certain property acquisitions. The development priorities changed to retail and entertainment with residential. Commencement and completion dates became time of the essence dates. Financing commitments were to be produced within 90 days of the modification of certain phases.

4. The Casino and the Power Plant properties were added as desired City-owned property to be rehabilitated. Additional City-owned property within the Asbury Park Redevelopment Area was valued at \$3,600,000.00 to be leased or sold to Ocean Mile. Ocean Mile commenced construction of the Ocean Mile Condominium Tower, which was never completed. Carabetta filed for bankruptcy and a series of long and protracted litigations ensued.

5. The City and Master Developer wish to enter into this Agreement to supercede and substitute for the Redeveloper Agreement, the Modification and the M.O.U. The parties

specifically recognize that an amended Redevelopment Plan (Plan IV) has been recently approved by the Mayor and City Council. The approval and lack of challenge of said Plan IV is a condition precedent to this Agreement, except as pertains to matters that are not affected by any suit or orders. In the event the Plan IV and/or this Agreement is nullified or voided by a court of law Master Developer may proceed utilizing the 1991 Plan and the Developer Agreements thereunder as approved by the Bankruptcy court until such time as an Amended or Revised Plan and Developers Agreement is approved without challenge.

6. The parties agree and recognize that Master Developer, is a developer, who has and may acquire and clear land for subsequent redevelopment by other qualified developers ("Subsequent Developers"). Master Developer will, as part of its role, assess ["Infrastructure Assessment"] Subsequent Developers a fee for overall infrastructure and utility improvements to be constructed by Master Developer in the Redevelopment Area. Master Developer shall be responsible for the construction of infrastructure improvements [with the Subsequent Developers being responsible for payment of the fees] as modified by Article 7 herein.

7. The parties further agree that the City wishes to maximize its future economic base and that the utilization by Subsequent Developers of a standard form of tax abatement contract pursuant

to the "Long-Term Tax Exemption Law" N.J.S.A. 40A:20-1 et seq. will maximize revenues for the City and provide for competitive and fair "tax" payments for Master Developer and Subsequent Developers.

8. The rehabilitation and renovation of certain City-owned property is of critical importance to the City and Master Developer, and this Agreement will establish times, and a method of evaluation for those properties. Master Developer is expected to purchase said properties, as appropriate, for subsequent rehabilitation and operation either directly or through Subsequent Developers. Master Developer has already purchased one City property, the former Albion Hotel, and demolished same as agreed.

9. The Parties hereto agree that as of the date of this Agreement there are no defaults or breaches of any contracts or agreements by either party.

Article I

Definitions

1.1 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 to be applicable equally to the singular and plural forms of such terms and to

the use of the upper and lower case initial letter of each word contained in such terms.

Additional Properties: As defined in Article 4.1

After Acquired Sites: Tax title liens "purchased" by the City or properties obtained by the City through foreclosure or otherwise, within the Redevelopment Area.

Agency: The Mayor and Council of the City of Asbury Park acting as the Redevelopment Agency pursuant to N.J.S.A. 40A:12A-1 et seq. as amended from time to time.

Agency Law and/or Redevelopment Law: N.J.S.A. 40A:12A-1 et seq.

Albion Property: Block-161 Lots-1, 2 and 4.

Approvals: Any non-appealable final approvals, authorizations, permits, licenses and certificates needed from governmental or quasi-governmental authorities having jurisdiction whether federal, state, county or local, subject only to such terms and conditions that do not constitute unacceptable conditions to the extent necessary to implement parts of the Project in accordance with the Redevelopment Plan, this Agreement and agreements with Subsequent Developers. Approvals may be obtained in phases.

Beach Clubs: Two, one or two-story structures to be constructed by Master Developer for utilization by beach patrons. One to be located on the eastern terminus of Ocean Avenue and the beach between 6th and 7th Avenues and to be available by paid membership. The second to be located on the eastern terminus of

Ocean Avenue and the beach between 1st and 2nd Avenues and available to the general public. In no event shall either facility impede pedestrian access to the boardwalk. Each Club will have a pool, the public club to have a wading or children's pool.

Bergh Street Properties: B-159, Lots-18, 19, 20, 21, 22, 23, and 24.

Board: Asbury Park Municipal Planning Board.

Boardwalk: The existing boardwalk, east of Ocean Avenue bordered on the south by Wesley Lake and on the Northerly border by Deal Lake excluding the area within Convention Hall and within the "Casino Property".

Boardwalk Renovation: the replacement of the wooden decking, railings and repair and/or replacement of the supporting structure(s) where necessary, construction of handicapped ramps and conduit for lighting.

Boardwalk Renovation Credit: A credit for sums expended for the Boardwalk Renovation.

Bradley Park Renovation: the creation of Convention Hall event temporary overflow parking only, within the existing park from Kingsley to Ocean Avenue, from Fifth Avenue to Sixth Avenue, as per a design to be mutually agreed to by the City and Master Developer, for a period not to exceed three years.

FAST TRACK

C-8 Property: Block-176, Lots-1 through 5 (one of three "fast tracks"). To consist of two towers, one ten stories tall and the other sixteen stories tall, containing 224 units. (This definition is subject to the Plan IV's requirements found on page 79.)

C.A.F.R.A.: Coastal Area Facilities Review Act. N.J.S.A. 13:19-1 et seq.

Casino Property: As defined in Article 4.1

City: The City of Asbury Park, a Municipal Corporation of the State of New Jersey, and its departments, divisions, subdivisions, authorities, agents, employees, bureaus, boards, and any other instrumentalities thereof.

Certificate of Completion: as defined in Article 9.

Certificate of Occupancy: certificate issued by City building department or agent thereof after inspection showing ability to occupy property; in the case of retail to include a mercantile license.

Charms Building: B-132; L-1

Commencement of Construction/Rehabilitation: The time after which a "project" either undertaken by Master Developer or a Subsequent Developer has begun construction, after the appropriate approvals for the project, or phase of the project, and building permit(s) have been issued.

Construction Code Official: an individual with appropriate qualifications including a class one construction license to be hired or contracted for by the City, or State of New Jersey, reasonably acceptable to Master Developer, whose cost will be reimbursed by Master Developer or State of New Jersey. The duties will be to review and expedite site plans, building plans, permits and inspections, exclusively in the Waterfront Redevelopment Area.

Convention Hall/Paramount Theatre Property: As defined in Article 4.1

COP: City owned Properties: As defined in Article 4.1

Default: shall mean such condition or event which or would, after notice or lapse of time or both, constitute an event of default as more particularly defined in Article 8.

Densities: The maximum number of dwelling units permitted to be built per block as described in Exhibit 1.

Design Guidelines: shall mean the design standards set forth in the Waterfront Redevelopment Plan (Plan IV).

E.D.U.: Equivalent Dwelling Unit

Emergency Services Site: a site to be determined, within one year, not to exceed 5,000 square feet within the Waterfront Redevelopment Area, if practicable, as per Plan IV.

Eminent Domain: the utilization of condemnation by the City pursuant to N.J.S.A. 20:3-3 et seq.

Empress Hotel: B-145, L-1.

Environmental Condition: Any pollution or contamination or threatened pollution or contamination of, or the release or threatened release of Hazardous Substances into the environment.

Environmental Laws: Any and all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, guidances, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect of hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. sect. 6901, et seq.); the Clean Water Act (33 U.S.C. sect. 1251, et seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11, et seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6, et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New

Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et seq.); and the rules and regulations promulgated thereunder.

Force Majeure: Acts of God, fire, earthquake, explosion, the elements, riots, mob violence or civil disturbance, inability to procure or a general shortage of labor, equipment or facilities, energy, materials, or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, court orders, laws, rules, regulations or orders of governmental or public agencies, bodies and authorities, acts of terrorism, labor disputes, strikes, picket lines (unless best efforts are not used to end said disputes, strikes, or picket lines), unavailability of materials, energy shortages, boycott efforts, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), acts of government (including without limitation any agency or department of the United States of America or the State of New Jersey and failure of the City to perform in accordance with the terms of this Agreement), litigation by third parties, including litigation contesting the Plan IV or the terms of this Agreement or other causes which are reasonably beyond the control of the defaulting or breaching party, or any other similar cause not within the control of either the Agency, Master Developer or Subsequent Developer provided however, the party who seeks to claim a delay occasioned by Force Majeure shall have, within thirty (30) days

after the beginning of any such delay, notified the other party in writing, which notice shall include the cause or causes of delay, and a request for extension for the period of the delay. Compliance with municipal laws regulating land use and construction, any legal requirements under any applicable environmental laws, as well as known NJDEP clearances, approvals, or permits typical of the development process or referred to in this Agreement, shall not be considered or construed as events of Force Majeure except to the extent of any delays in such compliance directly caused by any of the events listed above, or except to the extent a moratorium is declared by the State or a utility. All time frames are subject to Force Majeure.

Hazardous Substances: Any substance, material or waste, whether liquid, gaseous or solid, and any pollutant or contaminant, that is toxic, hazardous, explosive, corrosive or radioactive, or that is defined, listed or regulated under any Environmental Laws, including without limitation, petroleum, polychlorinated biphenyls and urea formaldehyde.

Hotel: a residential hotel or hotel/condominium with a minimum of 100 rooms entitling same to a newly issued, plenary retail consumption license, said license shall be conditioned upon State of New Jersey approval.

Institutional Financing: shall mean loans from mortgage lenders.

Infrastructure Assessment: a contribution imposed by contract of sale upon a Subsequent Developer.

Infrastructure Improvements: those public utility, street, traffic signalization and walkway, park, lighting and landscape improvements to be constructed and funded by the Master Developer.

Interest (rate): the prime rate published by J.P. Morgan / Chase Bank.

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 of the property conveyed to or purchased or sold by Master Developer or on any of the improvements constructed thereon.

Improvements: All new or rehabilitated buildings, structures and appurtenances including, but not limited to, a parking facility, more particularly described in Plan IV, and all other improvements constructed on or installed in the Project Premises in accordance with approved Construction Plans and Specifications, including those facilities and amenities, infrastructure, roads, sidewalks and landscaping shown in such approved Construction Plans and Specifications and the Site

Plans approved by the Board and City or State of New Jersey as being in the Project and used or to be used in connection with the buildings, including ancillary facilities if any. Improvements also comprise all facilities, amenities, on and off street parking, landscaping and fencing and enhancements made in the Project and the streets within the Asbury Park Redevelopment area including all infrastructures, utilities, catch basins, curbs, site lighting, street trees, roadways, traffic striping, signage, walkways, sidewalks and open space treatments as shall be shown on Preliminary Site Plans.

Lake Avenue Properties: Block-118, 128, 129.01 and 129.02 and the to be vacated beds of Summerfield Avenue between Cookman and Lake Avenue and the to be vacated bed of Monroe Ave. between Cookman and Lake Avenue (formerly A1A, A1B, A2), excluding property owned by the Board of Education. (One of three "fast tracks")

Lake Avenue Properties- Second Phase: B-127, 132, 131, 142 and 143 and the intervening to be vacated, street beds.

"Marine Grill" Properties: As defined in Article 4.1.

Master Developer: Asbury Partners, L.L.C., a Limited Liability Company of the State of New Jersey and/or its assignees or successors in interest, not to include a Subsequent Developer.

M.O.U.: That Memorandum entered into between the City and the Predecessor Companies dated August 13, 2001.

FAST TRACK

Monterey Hotel Property: Block-207 Lot-1 and Block-208, Lots-1-4 (formerly known as E-2 and E-4). (One of three "fast tracks")

N.F.A.: No Further Action letter issued by the N.J.D.E.P. in connection with the sale of any property.

N.J.D.E.P.: New Jersey Department of Environmental Protection

N.J.E.D.A.: New Jersey Economic Development Authority

N.J.R.A.: New Jersey Redevelopment Authority

Palace Amusement Building: B-130, L-1, 2 & 8.

Parties: City and Master Developer and Subsequent Developers.

"Pavilion Properties": As defined in Article 4.1.

Phasing Plan: Priority areas of development as defined in this Agreement, including Lake Avenue Properties, C-8 Property, and Monterey Hotel Property (also known as "Fast Tracks"), and certain properties to be developed for retail purposes.

P.I.L.O.T.: Payment in lieu of taxes.

Plan IV: Redevelopment Plan adopted pursuant to N.J.S.A. 40A:12A-1 et seq., by the Mayor and Municipal Council of the City of Asbury Park on June 5, 2002, titled the Asbury Park Waterfront Redevelopment Plan.

Power Plant Property: As defined in Article 4.1.

Project: Any part or portion and all improvements within the Asbury Park Redevelopment Area undertaken pursuant to the Plan IV.

Public Improvements, Utilities and Infrastructure: Schedule and scope of work as per a report to be agreed to by the parties. Exhibit 5 outlines the current estimated scope of same.

Redeveloper Agreement: Amended and Restated Redeveloper and Land Disposition Agreement dated _____ 2002, the _____ within document.

Redevelopment Area: The Asbury Park Waterfront Redevelopment Area as defined by and in the Asbury Park Waterfront Redevelopment Plan specifically the "Prime Renewal Area" and the "Boardwalk Area".

Redevelopment Plan: the revised Redevelopment Plan prepared by Clarke, Caton Hintz, Duany Platter - Zyberk & Co. and Ehrenkrantz Eckstut & Kuhn adopted June 5, 2002 titled Asbury Park Waterfront Redevelopment Plan (Plan IV).

Sewer Treatment Plant: B-208, L-3.

S.I.D.: Special Improvement District as defined in N.J.S.A. 40:56-65.

Stone Pony: B-160, L-8.

Subsequent Agreement: a contract of sale of real property entered into by Master Developer with a Subsequent Developer.

Subsequent Developer: a purchaser, assignee or transferee of Master Developer's rights, interest and/or title in or to part of the Project, subject to the provisions of this Agreement and the Redevelopment Plan (Plan IV).

Subsequent Developer Qualification: List of qualifications and background. Exhibit 3.

Tax Abatement: Payments in lieu of taxes pursuant to the Long-Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq.

Tax Abatement Agreement: a standard form(s) of Application and Agreement approved by the City attached hereto as Exhibit 4 to be utilized by Master Developer and Subsequent Developer(s), for residential and commercial development.

Technical Review Committee (T.R.C.): a review committee established by the Agency which shall review and comment on all concept and engineering/architectural plans for specific developments.

Urban Renewal Entity: a special purpose company formed pursuant to the requirements of the Long-Term Tax Exemption Law. The transfer of title of property to which will be a permitted transfer.

WRAP: Workable Relocation Assistance Program as defined by New Jersey State Law. (N.J.S.A. reference as in Section 4.2 of Plan IV).

Article 2

2.0 Purpose

The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the City and Master Developer in connection with the development and

redevelopment of the properties both privately owned and City owned within the Asbury Park Redevelopment Area. Master Developer has by assignment an existing contract, the M.O.U. with the City, entered into prior to the expenditure of substantial sums incurred in connection with the purchase of the contract rights of Carabetta and Ocean Mile and the subsequent purchase of substantial tax sale liens. The City pursuant to this Agreement is hereby reaffirming the designation of Master Developer as the exclusive Master Developer of the Asbury Park Waterfront Redevelopment Area and reaffirms Master Developer is not in default in any agreements or obligations. The City has selected Master Developer for the above reasons and its actions and expenditures since August 13, 2001 to the present. The parties recognize that Master Developer may, after acquisitions and clearance of parcels within the Project area, sell or otherwise transfer parts or phases of the Project to Subsequent Developers with the City's consent, said consent not to be unreasonably withheld. The Subsequent Developer(s) shall then be responsible to carry out such phases of the Project. Master Developer may retain property to develop and then shall be responsible for completion of that parcel or phase of the Project.

This Agreement amends and restates any previous Redeveloper's Agreement, the Modification of 1991 and the M.O.U., and any understanding(s) whether written or otherwise.

2.1 Duties of Master Developer

In accordance with its duties hereunder Master Developer has performed and will under this Agreement, continue to perform the following duties in furtherance of carrying out the Redevelopment Plan:

- a. pay taxes on all former Ocean Mile properties accruing commencing August 1, 2001, unless relieved of the responsibility to do so by mutual agreement, court order, mediation or judgment.
- b. In consideration for the transfer of the remaining City held tax sale certificates on the Ocean Mile properties, paid the City \$6,500,000.
- c. Retained various professionals, who have among other things, assisted in the completion of a revised Redevelopment Plan, and reviewed the infrastructure needs and estimates.
- d. Marketed, and continue to market, properties to potential Subsequent Developers.
- e. Conducted, or will conduct, environmental reviews and tests.
- f. Appraised, or will obtain appraisals, of properties.

- g. Acquired, and continue to acquire, properties using the City to acquire by eminent domain any further real estate necessary for the Project's completion.
- h. Demolished and will continue to demolish substandard properties for clearance and assembly and redevelopment of sites, with all necessary approvals. (No substantially occupied building is to be demolished without the Agencies' approval.)
- i. Enter into agreements with respect to the acquisition of specific City-owned properties on the terms and conditions set forth more specifically herein and in the contracts and exhibits attached hereto.
- j. Undertake infrastructure improvements as more specifically set forth herein.
- k. Cooperate with and assist in the formation of a written agreement and such other endeavors Master Developer deems prudent with the City and the NJDEP to set guidelines for and to facilitate the acceptance of the Redevelopment Plan by the Department of Coastal Areas Facility Review.
- l. Require in its contract with any Subsequent Developer, that the Subsequent Developer shall abide by and adhere to the Redevelopment Plan and Redevelopment Agreement.

- m. Require, as a condition of the contract with a Subsequent Developer, reasonable evidence of its financial ability and qualifications to complete the specific project, to be built on land acquired from Master Developer as approved by the Agency.
- n. Submit to Arbitration pursuant to Article 17, herein, in the event of a dispute with the City with regard to pertinent items.
- o. Assist with and participate in a coordinated defense in the event of litigation and in connection therewith make such corrections or additions to the Plan IV or this Agreement.
- p. Master Developer and Subsequent Developers to comply with all applicable City ordinances.

2.2. Duties of City

In accordance with its duties under the M.O.U., the City has performed and will, under this Agreement, continue to perform the following duties in furtherance of carrying out the Redevelopment Plan.

- a. The City will not negotiate or entertain another Redeveloper or Developer in the Redevelopment Area, unless it is a Subsequent Developer, but only as to a party who has entered into a contract with Master Developer or with its consent.

- b. Utilize the right of eminent domain on behalf of Master Developer and in connection therewith retain specific appraisers to be approved by the Master Developer.
- c. Assist in relocation of owners and tenants on behalf of Master Developer, pursuant to a W.R.A.P. as per New Jersey State statutes and paid for by the Master Developer.
- d. Expedite the review and approval by means of the T.R.C., planning board and the Agency, of specific site plans as long as they conform to the guidelines of the Redevelopment Plan, at no cost to the City. All applicants to pay customary review fees.
- e. Jointly, with Master Developer apply for, develop and negotiate an agreement with the N.J.D.E.P. for acceptance of the Redevelopment Plan and its guidelines, densities and projects by the N.J.D.E.P. to gain C.A.F.R.A. approval and cooperate in other applications to N.J.D.E.P., in a reasonably prudent manner (e.g. the issuance of a General Permit).
- f. Vacate and deed to Master Developer or, at its direction, to a Subsequent Developer certain vacated public streets, at no cost, pursuant to the Redevelopment Plan.

- g. Make available for sale and interim lease the City owned properties pursuant to this Agreement according to the terms and conditions of the C.O.P. Sale Agreements and Lease (Exhibits 6, 7, 8, 9, and 10).
- h. Adopt by Ordinance the form and contract of tax abatement agreement(s) (Exhibit 4) attached hereto to be utilized by Master Developer and Subsequent Developers within the Redevelopment Area and the qualifications for approval of Subsequent Developers (Exhibit 3).
- i. Issue permits and cooperate with outside agencies requiring the City's consent for the construction and rehabilitation of certain infrastructure improvements to be undertaken by Master Developer within the Redevelopment Area.
- j. Hire or contract with a Construction Code official, and subcode officials, if necessary, with exclusive jurisdiction in the Redevelopment Area. The fees or cost to be borne by Master Developer (and credited against Subsequent Developer permit fees, to the extent allowable only for construction and code review costs).
- k. Cooperate in the application for Federal and State grants and loans, to Master Developer and Subsequent Developers and/or the City for the furtherance of the

Project and its improvements particularly infrastructure. The COPS shall be a candidate for grant and loan assistance where Master Developer can demonstrate that it has, or will, obtain special consideration for said funds, otherwise the City may use grants or loans in other parts of the City.

- l. Undertake a conscientious enforcement of zoning and building codes, particularly unsafe, unsanitary, and illegal occupancies, and Redevelopment Plan requirements, for existing properties in the Redevelopment Area. Hire or contract with licensed personnel, the cost to be, upon consent, borne by Master Developer.
- m. Form the T.R.C. pursuant to the terms found in Article 11.3.
- n. Assist with and participate in a coordinated defense, and/or corrections or additions to, any challenge to the Plan IV or this Agreement.

2.3 The Project

The Project is described as the general building and construction as per the Plan IV, including its densities, height limitations, and uses. The Parties agree to recognize market conditions as they may change particularly with regard to the retail/commercial components of the Plan IV. The parties further

agree that there shall not be any further material changes of the Plan IV except by mutual consent of the parties and that the Planning Board will consider site plan submissions as per the Plan IV, taking into account the height and densities listed therein and Exhibit 1.

Exhibit 1 attached hereto shows a listing of the maximum residential unit densities for each block within the prime redevelopment area. The maximum density is to be used as a guideline and shall be limited by the height restrictions and design considerations of the Plan IV.

Notwithstanding the above, the maximum amount of units to be constructed in the Redevelopment Area may not exceed 3,164 as defined herein.

Each application for development submitted by Master Developer or Subsequent Developer shall conform in all material respects to the Plan IV guidelines, except as modified as provided above and any contractual arrangements by Master Developers will acknowledge same and comply with said requirements and provisions.

The Parties agree that if the Redevelopment Plan needs to be amended, the party making the request shall do so in writing with supporting documentation reasonably satisfactory to the other party and the City or Master Developer will provide a reply within 45 days. The reply will address only the conceptual

response and any formal application to change the Plan must follow New Jersey Statutes. Failure to reply will be deemed a consent to the Amendment. If one party believes the other has acted unreasonably in denying such consent, that party may submit the dispute to binding Arbitration as defined in Article 17 herein, each party to bear their own costs and the City and Master Developer to bear equally the cost of the arbitrator.

Article 3

Schedule of Development

3.1 Priority Portions of Project

The parties agree that the Redevelopment of the Lake Avenue Properties, the C-8 Property and the former Monterey Hotel Property as defined herein are of priority to both the City and Master Developer (the "Fast tracks").

Master Developer shall contract with a proposed Subsequent Developer for the development of the Lake Avenue Properties no later than 3 months from the execution of this Agreement.

Master Developer shall contract with a proposed Subsequent Developer for the C-8 property no later than 6 months from the execution of this Agreement.

Master Developer shall contract with a proposed Subsequent Developer for one of the City blocks comprising the "Monterey Hotel Property" (The Block) no later than 3 months from the

execution of this Agreement and the City blocks comprising the balance of the Monterey Hotel Project no later than 9 months from the commencement of construction of "the Block."

3.2 Second Phase- Lake Avenue Properties

Master Developer or a Subsequent Developer shall not begin construction on the Second Phase, defined as any part of the following listed City Blocks, unless it has commenced construction of the first fifty (50) units of housing on the Lake Avenue Properties, or sooner if approved by the City.

The City acknowledges the Master Developer's intention to acquire the private properties remaining in B-127, 132, 131, 142 and 143 and seek the vacation of the intervening street bed of Sewall Avenue between Grand and Cookman Avenues (Second Phase).

3.3 Pavilion Properties

The Pavilion Properties are part of the COP Properties as defined in Article 4 and are intended to be sold as provided therein. The Pavilion Properties are a priority for rehabilitation as well as an important part of the retail component of the Plan IV. Those Pavilion Properties which are designated as "open space areas" will be utilized for recreational/commercial activities and attractions with the current right of ways reserved for Boardwalk entry by the public and City vehicles.

When Master Developer closes title to the Pavilion Properties it shall be allowed to rehabilitate or construct the same, irrespective of the status of other properties in the Redevelopment Area.

Master Developer shall have exclusive right to vendor(s) permit(s) on the Boardwalk, with the City to issue and charge a reasonable and customary fee. Master Developer will give preference to Asbury Park residents for vendor status. No other such permits are to be issued in the Prime Renewal Area, except in conjunction with City sponsored/or authorized "street festivals" and sanctioned events, other than the Boardwalk and then only for the duration of the festival/or events.

If the obligation of the parties to sell and purchase the Pavilion Properties under the Pavilion Sale Agreement are terminated then the City shall have the right, but not the obligation, to sell any or all of the Pavilion Properties at public auction on terms and conditions acceptable to the City.

If Master Developer purchases the Pavilion Properties it must commence construction on at least one Pavilion Property, or at Master Developer's option, the property currently owned by Master Developer located east of Ocean Avenue, currently delineated as Block-176, Lot-4, within 6 months of obtaining all government approvals, which permits shall be promptly applied for.

Master Developer shall be allowed to rehabilitate each Pavilion Property (and the property delineated as Block 176, Lot 4) one at a time, with 9 months to begin construction of the next Pavilion Property after completion of the last one. Each of the Pavilion Properties must be substantially rehabilitated within three (3) years of the commencement of work on such Pavilion Property. All exteriors will be upgraded within three years of the date of this Agreement.

A minimum of one Pavilion shall be completely rehabilitated each year and all completed within four years from commencement of construction of the first Pavilion Property.

3.4- Convention Hall/Paramount Theatre

The Convention Hall Property (which includes both the Convention Hall and Paramount Theatre buildings), is a C.O.P. Property, as defined in Article 4, and is intended to be sold as provided therein. Among the conditions to the closing under the Convention Hall Sale Agreement is an approval of D.E.P. pursuant to N.J.A.C. 7:4-7.1.

The City shall be allowed the use of the Convention Hall building for up to twenty-one (21) events per year. The dates will be restricted by Master Developer to avoid conflict with the prime season(s) use of the Convention Hall building. A schedule is to be decided on annually which shall presume traditional uses at traditional times. The City's utilization

shall be for events and functions which serve a public or community purpose and not for commercial purposes.

There shall be no rental fee or charge but the City shall be responsible for providing janitorial, security, and paying utilities for the days or times of use.

Master Developer will be allowed to re-name the Convention Hall and Paramount Theatre buildings, either one or both, including using the name of a commercial sponsor. The Convention Hall and Paramount Theatre buildings shall continue to utilize the words "Asbury Park Convention Hall and Paramount Theatre".

The City shall make available to Master Developer any environmental tests, studies or data in its possession and any engineering or building reports or studies. The City will allow the Master Developer to utilize any approved State or Federal grant funds for testing environmental remediation or rehabilitation. The City will cooperate in applying for additional grant funds for the same purposes.

If the obligations of the parties to sell and purchase the Convention Hall Property under the Convention Hall Sale Agreement (Exhibit 7) are terminated then the City shall have the right, but not the obligation, to sell the same at public auction on terms and conditions acceptable to the City.

The renovation and rehabilitation of the Convention Hall Property must be done in a manner consistent and in keeping with

preserving the historic character and design of the property both with regard to the interior and exterior. Replicas and reasonable facsimiles shall be utilized for items to be replaced or restored.

The closing of the Convention Hall Sale Agreement is further subject to an agreement to be entered into with the N.J.D.E.P. and Master Developer, on terms and conditions acceptable to those parties. Said agreement shall address the rights and obligations of the maintenance, preservation, repairs and rehabilitation of the Convention Hall Property.

3.5. Casino Property and Power Plant Property

Both the Casino Property and the Power Plant Property are COPS as defined in Article 4 and are intended to be sold as provided therein.

The Master Developer shall have prepared a report by an appropriate professional firm(s) reviewing the condition of each property and recommendations for the rehabilitation, or demolition (limited to the rear of the Casino building) if necessary, and the costs of renovation along with a detailed schedule. The report shall also address any environmental conditions known or suspected with regard to each property.

The parties shall within 120 days of receipt of the above report, and prior to closing, agree to, said consent not to be

unreasonable withheld, a schedule of renovations to be undertaken by the Master Developer after closing.

If the obligation of the parties to sell and purchase either the Casino Property or the Power Plant Property under the Casino Sale Agreement are terminated then the City shall have the right, but not the obligation, to sell the same at public auction on terms and conditions acceptable to the City.

3.6 Marine Grill Properties

The Marine Grill Properties are COPS as defined in Article 4, and are intended to be sold as provided therein. The parties recognize their desire to make the Marine Grill Property delineated as Block-222, Lot-1 available for the construction of a mid-rise or hi-rise residential structure as per Plan IV.

The parties agree to apply to the N.J.D.E.P. to address any concerns or restrictions with regard to the ability to construct upon or utilize the Marine Grill Property delineated as Block-221, Lot-1.

Upon a determination by N.J.D.E.P. the parties will determine the utilization of such Marine Grill Property, including if necessary an amendment to the Plan IV, pertaining to said property only.

If the obligations of the parties to sell and purchase the Marine Grill Properties under the Marine Grill Sale Agreement are terminated then the City shall have the right but not the

obligation, to sell the same at public auction on terms and conditions acceptable to the City.

3.7 Intentionally Omitted.

3.8 C.O.P. After Acquired

Any property that may be or shall become city owned in the Prime Renewal Area or for which the City obtains a tax title lien, which is not specifically listed in this Agreement shall be available for purchase by Master Developer at Fair Market Value (F.M.V.) as per the method outlined in Section 4.3 of the Marine Grill Sale Agreement (Exhibit 9). The date for the determination of value shall be approximately 60 days prior to the time of closing. The City shall give notice to Master Developer in writing within 60 days of the City obtaining ownership of a parcel within the Prime Renewal Area of the Asbury Park Waterfront Redevelopment Area.

3.9 The Boardwalk

The City and Master Developer recognize the necessity for the repair and restoration of the Boardwalk (the Reconstruction).

The Master Developer shall submit engineering plans to the City for the Reconstruction, within three (3) months from the time of execution of this Agreement. The plans shall be subject to review by the City's outside engineers. The review shall be

for the purpose of ascertaining and concurring in the scope and quality of the Reconstruction.

The Reconstruction obligation shall be limited to the repair and/or replacement of the supports where necessary, the replacement of the entire decking or planks with 2" by 6" wide boards of southern yellow pine or Douglas fir in a "herring bone pattern", the replacement of the existing railings with appropriate metal, and the addition of electrical conduit and handicapped accesses, all as reconfigured by the Plan IV. Master Developer shall complete the Boardwalk work within eighteen (18) months of the approval of plans and issuance of permits with respect to the Reconstruction.

Master Developer shall be allowed a credit of, up to but not to exceed, four million (\$4,000,000) dollars (the Boardwalk Renovation Credit) for sums expended in the Reconstruction of the Boardwalk including professional fees, as per Exhibits 7, 8, & 9.

The City is in possession of a \$1 million dollar loan and grant from the State of New Jersey. The City shall be given a credit for the purchase of materials or other approved uses at the same unit price(s) as Master Developer will purchase. Said credit shall reduce the amount of Master Developer's Boardwalk Renovation Credit.

In consideration for the City utilizing the August 1, 2001 date for the value of the Marine Grill property B-221 L-1 and B-222 L-1 for sale to Master Developer, Master Developer shall construct, in addition to the Reconstruction obligation described above the following.

- a) two wooden gazebo type sun shelters north of Convention Hall and two south of Convention Hall each approximately 20 feet in width
- b) benches appropriately placed for visitors
- c) new decorative lighting fixtures (style and type to be agreed upon by the City and Master Developer meeting minimum public safety standards)
- d) expand the width of the existing Boardwalk from the area opposite the northerly edge of Sixth Avenue to approximately opposite the northerly edge of Seventh Avenue to match the current width of the remaining boardwalk.

The parties agree that Master Developer may undertake the Reconstruction without public bid, pursuant to the Agency and/or Redevelopment laws. Subject to the conditions set forth in section 3.4 and those set forth in the Convention Hall Sales Agreement. Master Developer shall close title to Convention Hall/Paramount Theatre by October 1, 2003 or upon completion of the Boardwalk reconstruction, whichever comes first.

3.9.1 Arthur Pryor Bandshell

Master Developer desires to demolish the existing bandshell at the pavilion property commonly known as "Howard Johnson." In the event it obtains the appropriate approvals to accomplish same it shall build a replacement public concert "bandshell" on the C.O.P. between the Fourth and Fifth Avenue pavilions or another site agreed upon by the City and Master Developer. The facility shall accommodate seating for 200 persons and have a stage area for performances.

3.10 Bradley Park Reconstruction

Master Developer shall, through its professionals, submit, for the City's review, a plan to redesign Bradley Park to provide for its reconfiguration and the utilization of portions of the Park for overflow Convention Hall event parking.

It is agreed that the reconstruction shall be done to provide overflow event and temporary parking for a maximum of a three year period from approved plans. At the end of three years the Park shall no longer be used for parking purposes.

The cost of the redesign and construction, if Master Developer chooses to undertake the work, shall be borne by Master Developer and reimbursed with interest by an assessment pursuant to the S.I.D. mechanism outlined in Article 14.

3.11 Emergency Services Building

The Parties will identify, within one year of the date hereof, a site of approximately five thousand (5000 sq. ft.) square feet for the possible future construction of an emergency services building. The site may include a portion of land currently part of the land upon which the sewerage treatment plant is located, if practical.

Master Developer will contribute up to fifty (\$50.00) dollars per square foot of construction costs not to exceed 5,000 square feet.

3.12 Other Acquired Properties

The parties agree that City blocks, within the Redevelopment Area, are to be acquired, pursuant to the Plan IV, either by Master Developer directly or through eminent domain.

Master Developer shall have 12 months from the time each block is fully acquired to contract with a Subsequent Developer and/or begin the approval process as a developer.

3.13 Beach Clubs

Master Developer shall be responsible for the construction of two, one or two-story Beach Club facilities, one of which shall be available for the general public.

The first will be located on the eastern terminus of Ocean Avenue and the beach between 6th and 7th Avenues and Master Developer may charge a membership fee.

The second, the public Beach Club will be located on the eastern terminus of Ocean Avenue and the beach between 1st and 2nd Avenue and available to the general public.

Neither of the facilities shall be built to impede pedestrian access to the boardwalk.

Each Club will include a pool, the public club's to be a children's pool.

Master Developer shall retain title to both properties.

The obligation to construct the facility for the general public is explicitly conditioned on Master Developer obtaining all approvals to construct the two Beach Clubs. Once approvals are obtained, both facilities are to be constructed and completed simultaneously, but the public Beach Club may be constructed prior to the other. Each shall contain those facilities specified in the Plan IV.

3.14 Dune restoration

The northernly portion of the beach area under the Plan IV is proposed to have certain dunes created and beach restoration. This improvement is explicitly contingent upon approval by all governmental authorities of the Townhouse development in Blocks 220 and 222 as shown on the Plan IV. The Master Developer shall have the cost of said improvements repaid, with interest, by the mechanism of the S.I.D., only if it is not able to obtain the approvals outlined in Article 3.9 for B-222, L-1.

3.15 6th Avenue Opening

The parties agree that the re-opening of 6th Avenue, from Kingsley to Ocean Avenue is an important aspect of the Plan IV.

The parties acknowledge that (i) the southernly half of the former street bed of 6th Avenue is owned by the owner of the Berkeley Carteret Hotel and the northernly half by the Master Developer and (ii) the half owned by the Hotel is occasionally utilized by it for parking. The City and Master Developer agree to negotiate and if necessary, condemn, to obtain that portion of said former street bed owned by the Berkeley Carteret Hotel. The City and Master Developer will replace the amount of parking spaces in the former street bed with street parking dedicated exclusively to the Hotel. The recreated street bed shall become part of the Master Developer's infrastructure improvements, so long as it is not the subject of litigation.

3.16 Conditional Properties

It is agreed that the following properties have conditions attached to their ultimate disposition, development or redevelopment.

3.16.1 The Palace Property

The parties agreed to the significance of the property and also that it is currently in an extreme state of deterioration and is structurally unsound.

Master Developer shall offer to sell the Palace Property, except for the westerly "L shaped" portion upon the following conditions:

- i. A purchase price of two million five hundred thousand (\$2,500,00.00) dollars, which has been set by the Master Developer.
- ii. Evidence of adequate financing and/or funds to rehabilitate the structure for ultimate operation and occupancy is submitted by the proposed purchaser to Master Developer.
- iii. The deed shall contain a restriction limiting the primary use to a children's/family recreational and/or learning facility with only ancillary commercial/retail uses and shall prohibit the use of a liquor license for the site.
- iv. A purchaser shall sign a contract of sale with Master Developer providing for a ten (10%) percent deposit within six months of the date of the execution of the Agreement, with a closing to occur within six months thereafter.

If a purchaser cannot be found on the above conditions, then the City agrees to issue a demolition permit and Master Developer will proceed to demolish said property in accordance with state law.

3.16.2 Stone Pony

The property will not be subject to acquisition by eminent domain unless it ceases operation as a musical "night club" for a period of six (6) months. In that event Master Developer may request the acquisition of said property by the City and develop the property in conformance with the Plan IV.

The property shall have its roof rehabilitated to make same aesthetically appealing.

3.16.3 "Bergh Street" Properties

The Bergh Street properties shall become subject to eminent domain if the occupied properties should become substantially vacant or should fall into a state of disrepair.

If the vacant property located at Block-159 Lot-24 is not substantially rehabilitated and occupied within six (6) months from the execution of this Agreement it shall become subject to acquisition by eminent domain.

3.16.4 The Empress Hotel

As per the Plan IV requirements the property is subject to eminent domain proceedings if the owner does not begin a substantial rehabilitation of the property within one (1) year of adoption of the Plan IV. The work is to be completed within eighteen (18) months of the one (1) year deadline.

Master Developer will acquire the surface parking lot adjoining the Empress Hotel and provide the owner with an equal

amount of parking spaces in a parking structure currently planned to be three levels.

Master Developer will increase the structure by two or three additional levels which shall make available at market rates to the general public 200 spaces as paid parking. In return, the three (3) story allowable structures on Block 145 and Block 146 per Plan IV on Kingsley Street may be increased to two (2) stories above the parking structure but not to exceed eight (8) stories.

3.16.5 Charms Building

Master Developer will attempt to integrate the rehabilitation of the "Charms" property along with the new building construction planned for the block by a Subsequent Developer. Master Developer shall make a "good-faith" effort as documented by correspondence with potential Subsequent Developers.

If after one and one-half (1½) years of the execution of this Agreement, Master Developer has not been able to accomplish same, the Charms building will be subject to demolition.

3.16.6 Kingsley Avenue Retail

The Plan IV allows for retail use at the ground level along Kingsley Avenue. The parties acknowledge that retail use is allowable and encouraged but not mandatory.