

### 3.17 Tenancies

All City owned property shall be delivered at the time of closing with no tenants whose leases or rights cannot be cancelled on not more than ninety (90) days notice, unless otherwise specified in Exhibits 6-9.

### 3.18 The Master Developer (Asbury Partners, LLC)

Master Developer represents and warrants as follows:

- a. it is duly created under the Laws of the State of New Jersey and is duly organized and existing in good standing;
- b. it has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein;
- c. that the person executing this Agreement on its behalf is authorized to do so and that this Agreement constitutes a valid and legally binding obligation of Master Developer.
- d. That Master Developer has the necessary expertise, qualifications, staff and resources to undertake and fulfill the obligations hereunder.

## Article 4

### Conveyance and Transitional Net Leasing of COP Properties

#### 4.1 Definition of C.O.P. Properties

For purpose hereof, the term "COP Properties" shall mean the following (properties): (i) the Pavilion Properties; (ii) the Additional Properties (iii) the Convention Hall Property; (iv) Casino Property; (v) the Power Plant Property; and (vi) the Marine Grill Properties. As used herein, the following terms shall have the following meanings:

- (A) "Pavilion Properties" shall mean the Pavilion Parcels (as defined on Exhibit 2 hereto), together with the Improvements thereon.
- (B) Additional Properties shall mean the Additional Parcels (as defined on Exhibit 2 hereto) together with the Improvements thereon.
- (C) "Casino Property" shall mean the Casino Parcel (as defined on Exhibit 2 hereto), together with the Improvements thereon.
- (D) "Convention Hall Property" shall mean the Convention Hall Parcel (as defined on Exhibit 2 hereto), together with the Improvements thereon.
- (E) "Power Plant Property" shall mean the Power Plant Parcel (as defined on Exhibit 2 hereto), together with the Improvements thereon.

(F) "Marine Grill Properties" shall mean the Marine Grill Parcel (as defined on Exhibit 2 hereto), together with the Improvements thereon.

#### 4.2. COP Sale Agreements

Simultaneous with the execution and delivery of this Agreement, the City, as seller, and Master Developer, as purchaser, are entering into the following Sale and Purchase Agreements of even date herewith (herein called collectively called the "COP Sale Agreements"): (a) a Sale and Purchase Agreement, in the form of Exhibit 6 hereto, setting forth the terms and conditions upon which the City intends to sell to Master Developer, and Master Developer intends to purchase from the City, all the Pavilion Properties and the Additional Properties (which agreement is herein called the "Pavilion Sale Agreement"); (b) a Sale and Purchase Agreement, in the form of Exhibit 7 hereto, setting forth the terms and conditions upon which the City intends to sell to Master Developer, and Master Developer intends to purchase from the City, the Convention Hall Property (which agreement is herein called the "Convention Hall Sale Agreement"); (c) a Sale and Purchase Agreement, in the form of Exhibit 8 hereto, setting forth the terms and conditions upon which the City intends to sell to Master Developer, and Master Developer intends to purchase from the City, both the Casino Property and the Power Plant Property (which agreement is herein

called the "Casino Sale Agreement"); and (d) a Sale and Purchase Agreement, in the form of Exhibit 9 hereto, setting forth the terms and conditions upon which the City intends to sell to Master Developer, and Master Developer intends to purchase from the City, the Marine Grill Properties (which agreement is herein called the "Marine Grill Sale Agreement").

The terms and conditions of said Sale Agreements shall be binding on Master Developer and any successor in interest, assignee or purchaser.

#### **4.3. COP Net Lease**

In addition, simultaneous with the execution and delivery hereof, and pursuant to the terms of the COP Sale Agreement, the City, as landlord, and Master Developer as tenant, are entering into a certain net lease, in the form of Exhibit 10 hereto (which net lease is herein called the "COP Net Lease"), pursuant to which the City is demising the entirety of the Convention Hall Property, the Casino Property, the Power Plant Property and the Marine Grill Property to Master Developer for a term (a) commencing on the date hereof and (b) ending, as to each such COP Property, on the first to occur of (i) the closing of the sale and purchase of such COP Property pursuant to the applicable COP Sale Agreement; or (ii) the termination (prior to closing) of the applicable COP Sale Agreement.

**4.4. Impositions/Taxes.**

Real estate taxes and any and all impositions assessed against the COPS after the closing shall be the responsibility of Master Developer. (However, the parties agree that the Master Developer will pay taxes based on the value and percentage of the general tax rate as listed on Exhibit 12, until the commencement of work.) Additionally the parties shall agree to utilize the form of Tax Abatement Agreement and Application and formulas attached hereto as Exhibit 4. Master Developer or Subsequent Developer as the case may be, shall apply to the City for a Tax Abatement Agreement for each COP Property and each proposed development in the Redevelopment Area. The City shall utilize the form and provisions of the tax abatement defined in Article 10 of this Agreement.

**4.5. Provisions Not Merged with Deed.**

As provided herein and in the COP Sale Agreements none of the provisions of this Agreement are intended to or shall be merged into the deed transferring title or interest to any COP Property or other Property from the City to Master Developer or any successor in interest of the Property, except as required by any provisions of the Redevelopment Laws.

Provisions of this Agreement required to be performed or enforced after closing of title shall survive the closing and be enforceable under the terms of this Agreement.

## Article 5

### Access

#### 5.1 Access.

Pursuant to and to the extent of its rights under Local Redevelopment Law and subject to Legal Requirements, the City agrees to furnish Master Developer, its agents or designees, with access to any portion of the Project Premises, including the Condemnation Property to which access will be furnished in accordance with law, at any time and from time to time during the term of this Agreement prior to the Closing of Title for the purpose of making soundings or test borings, conducting investigations, surveys, engineering, environmental, or architectural studies or tests, or preparing engineering, environmental, or architectural data and appraisals, provided Master Developer furnishes the Agency reasonable written notice in advance of any such entry setting forth Master Developer's intent to enter any portion of the Project premises and with satisfactory evidence of liability insurance in an amount not less than one million dollars (\$1,000,000) insuring Master Developer and the City against claims for bodily injury, death and property damage arising from or attributable to such entry. Master Developer agrees to request its initial access, provided by this Section 5.1, no less than five (5) business days before requiring access.

## Article 6

### Condemnation

#### 6.1. December, 2001 Resolution

The parties recognize and incorporate herein a Resolution dated December 2001 authorized by the Municipal Council of the City of Asbury Park confirming the use of eminent domain for the project.

The City has by Resolution authorized a contract to retain Donald Molliver M.A.I. to appraise properties in order to carry out the eminent domain actions required to implement the project and will agree to utilize other M.A.I. appraisers of Master Developer's choosing as necessary.

Master Developer shall first be required to make a good-faith effort to acquire property by private negotiation after having obtained an appraisal. If Master Developer is not able to do so, Master Developer shall notify the City in writing. The City shall promptly commence the necessary actions to acquire said property pursuant to eminent domain under the Redevelopment laws.

Master Developer will be responsible for the payment of all acquisition costs, including the costs of appraisal(s) and attorney fees.

## 6.2. Schedule of Properties Eligible for Acquisition

The parties agree to follow the Plan IV for properties which are eligible to be condemned and for which Master Developer has the right, but not the obligation to acquire, through the City's use of its power of Eminent Domain, as set forth therein.

### Article 7

#### Public Improvements, Utilities and Infrastructure

##### 7.1 Review of Existing Infrastructure

The parties agree that Master Developer shall be responsible for the costs of all reasonable infrastructure repairs or improvements within the Redevelopment Area, whether associated with property it develops, sells to, or causes a Subsequent Developer to develop or rehabilitate.

The parties further agree the Plan IV contemplates a fair and equal distribution of the infrastructure costs by the new buildings and that the acquisition and construction outlined therein is critical to the infrastructure funding and construction.

Master Developer has retained the engineering firm of Schoor, DePalma to review the existing Sanitary and Storm Sewer, Water, Gas Lines, Electric Service, Telecommunications and "Cable". In addition vehicular circulation patterns, upgraded traffic signalization, street patterns, and pedestrian

configuration, amongst other matters, are being reviewed. Master Developer will make available a written report within 15 days of receipt by Master Developer to the City. The parties will review the report and agree to a reasonable schedule, estimated cost, type and method of repair of infrastructure components in the Redevelopment Area. The parties shall review the necessary improvements by prioritizing the needed repairs or replacements.

Exhibit 5 is illustrative of the scope of the infrastructure improvements, which are expressly subject to revisions and additions by means of the above report and agreement by the parties.

Master Developer shall provide to the City, engineering drawings, for review of each portion or segment of work. The parties agree that said repairs and replacements shall generally be made to those facilities associated with and related to specific development parcels or property within the Redevelopment Area. An exception might be sewer or water lines within the Redevelopment Area that must be repaired or replaced beyond those directly required for the specific project.

Master Developer will be responsible for infrastructure repairs outside of the perimeter of any given City block, that is, from the "curb out". It shall be the responsibility of the individual Subsequent Developer to construct or reconstruct the

infrastructure from the "curb in" that will service a specific development.

The Subsequent Developer's responsibility will be to repair or construct all utility components required but not limited to new electrical lines, sewer lateral and storm lateral lines, cable and telecommunications lines within the "curb" to service each block.

Master Developer will design the sidewalks and in some instances storm and sewer laterals but it will be the responsibility of the Subsequent Developer to construct them.

If the City and Master Developer cannot agree on the costs, method and amount of improvements they shall submit their disagreement to the redevelopment agency and if unsatisfied Master Developer or City may submit the dispute(s) to mediation and if there still exists disagreement, then to Arbitration.

7.2. The City shall provide for inspection of all Infrastructure Improvements. During construction of the Infrastructure Improvements by Master Developer, at least thirty (30) days prior to the commencement of any Infrastructure Improvement, Master Developer shall provide the City and the City's engineer with copies of plans and specifications for that portion of the Infrastructure Work. The City shall thereafter have a period of fifteen (15) days from the engineer's receipt

of said plans and specifications to advise Master Developer of any reasonable requests for changes to the plans and specifications. Failure to do so during the aforesaid fifteen (15) day period shall be deemed as the City's satisfaction with the proposed Infrastructure Improvement.

The City and Master Developer shall agree on an inspection fee schedule to be paid by Master Developer prior to commencing the improvements.

7.3. The City shall endorse any and all applications, permits, or similar documentation as may be required by the County, the State, or any agency, entity, governing body, or authority having jurisdiction over the Infrastructure Improvements, within fifteen (15) days of submission of aforesaid documentation to the City for endorsement, if appropriate in form and substance.

7.4. Master Developer shall not be obligated to obtain any City required permits as may be typically required by the City for commencement of the Infrastructure Improvements, by private individuals, except that the work must have previously been approved and deemed appropriate by the City Engineer. Subsequent Developers will be required to obtain permits for sewer connections and where required for construction of a project, street opening permits. Master Developer and Subsequent Developers where applicable will cause its contractors, vendors

or utility companies to post bonds and/or payment and performance bond guarantees, sufficient to ensure completion of the work and maintenance bonds where applicable. The bonds and performance guarantees shall provide that the Contractor(s) undertaking work shall make the City a third-party beneficiary. Performance bonds should run through the completion of construction pertaining to the work and maintenance bonds for a period of at least two years. At least twenty-five (25) days prior to commencement of the Infrastructure Improvement, Master Developer shall notify the City that it intends to commence work. This notice period shall not however, be applicable to any emergency work which Master Developer must undertake. Notice to the City shall be deemed automatic notice to all City agencies.

7.5 Master Developer shall implement traffic and safety controls and measures during construction of the Infrastructure Improvements. When necessary, and subject to availability of resources, the City may allocate the resources of its Police Department and the appropriate Departments as to detour measures, signage, posting of road notices as to dates of work, notification to other agencies and other appropriate actions, the cost to be borne by Master Developer.

7.6 The City shall provide proper notice to all property owners that may, in any way, be affected during construction of the Infrastructure Improvements, whether directly, such as by

the temporary loss of utilities, or indirectly such as inconvenience to access the property owner's property during construction periods.

7.7 Master Developer shall coordinate the involvement of and collaborate with any other governmental bodies, authorities, utility companies, federal, state or county agencies, or the like which may have jurisdiction over the Infrastructure Improvements.

7.8 The City shall have a fifteen (15) day period after it has received the as-built drawings from Master Developer stating that portion of the work is complete, to have its professionals inspect the work or it shall be deemed to have accepted same. If deficiencies are found during the course of the City's final inspection, then Master Developer will notify the City as to the correction of those deficiencies and the City will be given an additional ten (10) days to determine Master Developer's compliance.

7.9 Master Developer shall pay all fees for services rendered by any of the City's professionals in connection with review and inspection of Infrastructure Improvements. All review and inspection fees shall be paid by Master Developer within 10 days of receipt of the bills.

7.10 Master Developer, upon the posting of maintenance guarantees, shall not be responsible for any damage to the

completed Infrastructure Improvements, which is caused by any Subsequent Developer(s) or by any third party after completion subject to paragraph 7.8 of the Infrastructure Improvements by Master Developer. It is the intent of the Parties that, subject to subparagraph 7.8 above, the City shall immediately accept the Infrastructure Improvements. The City shall thereafter retain sole responsibility for maintenance, repair and improvements thereto.

#### **7.11 Grants and Loans**

The City and Master Developer agree to prepare grant and loan applications for funding for various improvements needed for the Project, subject to the provisions of Article 2.2.K, including but not limited to infrastructure and utilities. The applications shall be satisfactory to each party and submitted by the City to the applicable federal, state or local government authority to attempt to obtain grant or loan assistance for said improvements. The grant and loan application costs shall be borne by Master Developer. In the case of loans Master Developer shall be responsible for repayment of same. Agencies shall include but not be limited to the New Jersey Economic Development Authority, New Jersey Redevelopment Authority, United States Environmental Protection Agency, United States Economic Development Administration and the Department of Housing and Urban Development.

### 7.12 Sewer Treatment Capacity

The City, Master Developer and Master Developer's expert represents that there is sufficient sewerage treatment capacity for the project as defined below, as per the report of T & M Associates concerning same, which report has been confirmed by Master Developer's experts.

The parties agree that Master Developer and Subsequent Developer will be allowed to construct within the Redevelopment Area, two thousand five hundred (2,500) new residential units. In addition, Master Developer and Subsequent Developers will be allowed to construct up to five hundred (500) residential units but only to the extent, on a unit for unit basis, existing residential units, whether occupied or not, are demolished by Master Developer in the Prime Renewal Area, beginning with August 2001 as a benchmark for demolition.

In addition to the above, Master Developer will be allowed an additional sixty-four (64) units to be added to the C-8 building if it is rehabilitated and construction completed as described in the Plan IV. If it is demolished Master Developer will be allowed to have the sixty-four (64) units added to the 2,500 allowance, totaling 2,564 before consideration for units demolished (not to exceed an additional 500). In addition, Master Developer will be allowed to develop or cause to be developed a 100 room hotel.

### 7.12.1 Future Sanitary Sewer Capacity

The parties estimate that there exists sufficient capacity in the sewerage treatment plant to accommodate Master Developer's "build-out" as outlined in 7.12 above and some additional capacity for units outside the Redevelopment Area.

After the execution of this Agreement, the City will record the issuance of building permits outside the Redevelopment Area as defined herein.

The City may issue building permits for areas other than the Redevelopment Area during the period of Master Developer's build-out. The City shall give priority to Master Developer.

In the event an anticipated capacity question should arise by Master Developer's or the City's experts before the build-out is completed, the City shall give priority to Master Developer to utilize capacity until it completes its build-out.

Notwithstanding the above the City may continue to issue building permits provided it provides sewage capacity for Master Developer.

In addition to the above current estimated capacity the parties believe that the Infrastructure improvements will increase the current capacity of the sewerage plant. The increased capacity caused by and attributable to the infrastructure improvements shall be utilized after consideration for full build-out as outlined in paragraph 7.12

in the following priorities. First by the City of up to 1,264 E.D.U.'s and the remainder, if any, seventy-five (75%) percent by Master Developer and twenty-five (25%) percent of the remainder of the excess capacity by the City.

To determine the excess capacity after "full build-out" of the Redevelopment Area and considering the remaining City reserved flow, if any, the City Engineer will periodically evaluate available capacity at the sewerage treatment plant, including calculating "Actual" and "Committed" Flows (as defined by the NJDEP Capacity Assurance Program Regulations NJAC 7:14 A-22.16). The City Engineer will then provide a written report to the Agency with a copy to Master Developer regarding remaining (excess) capacity along with an accounting of the total number of EDUs that have been built within the City since the execution of this Redevelopment Agreement. The purpose of the Engineer's Report will be to determine whether "excess" sanitary sewer capacity exists and is available for Master Developer for use throughout the City of Asbury Park. The determination of Actual Flow and available capacity will be made based on an average of the sewerage plant flow for the highest three (3) month consecutive period within the previous two and one half (2 ½) year period and six (6) months after the "full build out" is acknowledged. Should the highest three (3) month period occur prior to "full build-out", an estimated flow for unoccupied and

unbuilt units will be included in the computation of the Actual Flow.

If at any time after Master Developer is granted excess capacity, in writing by the City, and before Building Permits are issued for new units beyond the "build-out", the Actual Flow at the sewerage plant exceeds the Permitted Flow, the City reserves the right to withdraw its approval to Master Developer for the excess capacity, without penalty.

### **7.13 Sewerage Treatment Plant Upgrade**

The parties agree that the sewerage treatment facility has, from time to time, a deleterious odor condition affecting the surrounding areas and will be an impediment to any new nearby construction.

Master Developer will commission an engineering review within eighteen months with suggestions to correct the problem. The City and Master Developer will confer and agree to the solution and cost, which the parties agree should not exceed \$1.75 million dollars including professional fees. Master Developer shall have the option, but not the obligation, to undertake the necessary repairs or corrections. Master Developer shall be reimbursed for said expenditures and professional fees, with interest, at prime rate plus one (1%) percent, through a special assessment of sewerage permit fees for new construction in the Prime Renewal Area, calculated to

return the expenditure over the build-out number of 3,164 units, with interest. Reimbursement will be allowed only if Master Developer undertakes the capital improvements.

## **Article 8**

### **Termination and Default**

#### **8.1 Abandonment, Notices**

A. Abandonment of any part or portion of the Project by Master Developer or Subsequent Developer shall mean the failure to adequately staff or diligently prosecute the Project to ensure the achievement of the Project.

B. Failure by Master Developer or Subsequent Developer to meet the times for commencement and completion set forth for any part or portion of and or to meet the terms and conditions contained in this Agreement shall constitute a Default for that property or portion of the Project only.

C. Default Notice. In the event that the City declares Master Developer or Subsequent Developer in Default, it shall do so by advising Master Developer or Subsequent Developer in writing, pursuant to the notice provisions of this Agreement, that it has declared Master Developer or Subsequent Developer in Default (hereinafter "Default Notice"). Absent such Default Notice, no declaration of Default shall be deemed binding against Master Developer or Subsequent Developer. The Default notice shall be given by the City within ten (10) days of action

by the Agency or its designee determining that Master Developer or Subsequent Developer is in Default and shall state with specificity the reasons for declaring the Default. Upon receipt of the Default Notice, Master Developer or Subsequent Developer may contest said determination and shall have sixty (60) days in the case of a financial obligation, to commence to correct such failure or defect; or in the case of a non-financial obligation, sixty (60) days to commence to cure said failure or defect and shall diligently proceed to correct same in a reasonable period of time given the nature of the breach. In the event that Master Developer does not cure the Default as set forth herein, the City shall have the right to exercise the remedies set forth in Article 8. The Parties may agree, notwithstanding the provisions of this paragraph, to extend the period of time by which Master Developer or Subsequent Developer must respond to the Default Notice or the period of time in which Master Developer or Subsequent Developer must cure the Default. If there is a disagreement as to whether a default has occurred, the matter shall be resolved by Arbitration.

### **8.2 Prior to Conveyance of Property**

In the event that, prior to the conveyance of any Property to Master Developer and in violation of this Agreement, Master Developer (or any successor in interest) does not take title to property upon tender of conveyance by the City pursuant to this

Agreement, and/or if any default or failure referred to in this Article 8 shall not be cured within ninety (90) days after the date of written demand by the City, then any rights of Master Developer or its Subsequent Developer, assignee or transferee in that specific property, or arising therefrom with respect to the City or the property, shall, at the option of the City, be terminated, in which event Master Developer or its assignee or transferee and the City shall have no further rights against or liability to each other under this Agreement, with regard to that Property only.

In the event of a circumstances where a 90 day cure is not possible in spite of the exercise of due diligence Master Developer may have an additional 90 days to cure said Default.

### **8.3 Default After Conveyance to Developer.**

In the event that, subsequent to the conveyance of Property by the City to Master Developer or a Subsequent Developer

I. Prior to Commencement of Construction/Rehabilitation as defined herein:

- (1) Master Developer or its successor in interest shall materially default in or violate its obligations with respect to the construction of the Improvements or Rehabilitation (including the nature and the dates for the beginning and completion thereof), or shall abandon that part of the Property and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within six (6) months after written demand by the City to do so or

- (2) Master Developer or its successor in interest shall fail to pay real estate taxes or assessments on the property for a period in excess of twelve (12) months or any part thereof when due, or shall place thereon any encumbrance or lien in violation of this Agreement or of a Subsequent Developer, Agent of Master Developer, or shall suffer any levy or attachment to be made, or any other unauthorized encumbrance or lien, other than a mechanics lien or construction mortgage, to attach and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within six (6) months after written demand by the City to do so; or
- (3) There is, in violation of this Agreement, any non-permitted transfer of the Property and such violation shall not be cured within four (4) months after written demand served upon Master Developer as its successor in interest by the City,

Then the city shall have the right upon ninety (90) days notice to Master Developer or Subsequent Developer.

- A. In the case of COP Property to re-purchase the Property from Master Developer or Subsequent Developer for a re-purchase price equal to the Purchase Price paid thereto pursuant to the applicable COP Sale Agreement and closing statement. The Deed(s) to Master Developer shall contain a reference to this Article 8. The re-purchase of title by the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage. A new Subsequent Developer may be selected by the City pursuant to the same criteria used for the selection of Subsequent Developers. If the City chooses, it may sell the property at public auction, with rehabilitation as a condition of sale. The defaulted developer may not be eligible to bid either directly or indirectly thru a third-party or as a member of an entity or company.

- B. In the case of Property other than COP Property comprising a part of the Project and assembled for a specific development, the City shall give written notice of the default for failure to commence construction/rehabilitation and the defaulted Subsequent Developer shall lose its rights as a redeveloper and shall be prohibited from continuing the project. Any new developer selected by the owner or mortgagee to undertake the project will be subject to approval by the City as a Subsequent Developer.

II After Commencement of Construction/Rehabilitation as defined herein:

- (1) Master Developer or its successor in interest shall default in or violate its obligations with respect to the construction of the Improvements or Rehabilitation (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work on the property or part of the Property and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within six (6) months after written demand by the City to do so or
- (2) Master Developer or its successor in interest shall fail to pay real estate taxes or assessments on the property for a period in excess of nine (9) months, or any part thereof, when due, or shall place thereon any encumbrance or lien, other than a mechanic's lien, in violation of this Agreement or of a Subsequent Developer, Agent of Master Developer, or shall suffer any levy or attachment to be made, or any other unauthorized encumbrance or lien other than a construction mortgage to attach and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within six (6) months after written demand by the City to do so; or
- (3) There is, in violation of this Agreement, any non-permitted transfer of the Property and such violation shall not be cured within four (4)

months after written demand served upon Master Developer or its successor in interest by the City:

Then the City shall have the right upon ninety (90) days notice to Master Developer or Subsequent Developer.

- (A) In the case of COP Property, to re-purchase the Property from Master Developer or Subsequent Developer for a re-purchase price equal to (i) the Purchase Price paid thereto pursuant to the applicable COP Sales Agreement and closing statements plus (ii) any documentable improvements or "hard costs". The Deed(s) to Master Developer shall contain a reference to this Article 8. The re-purchase of title by the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage. A new Developer may be selected by the City pursuant to the same criteria used for the selection of Subsequent Developer. If the City chooses it may sell the property at public auction, with rehabilitation as a condition of sale. The defaulted Developer shall not be eligible to bid either directly or indirectly thru a third-party or as a member of an entity or company.
  
- (B) In the case of Property other than COP Property comprising a part of the Project and assembled for a specific development, the City shall give written notice of the default for failure to complete construction/ rehabilitation and the defaulted developer shall lose its rights as a redeveloper and shall be prohibited from continuing that project. Any new developer selected, by the owner or mortgagee, to undertake the project will be subject to approval by the City as a Subsequent Developer.

III. In the event of Default by a Subsequent Developer

- (A) In the event of a Default, whether prior to or after commencement of construction or rehabilitation, then Master Developer shall have the right of first refusal prior to the City

exercising its right. The Master Developer may repurchase the defaulted property or select, for submission to the City for approval, another Subsequent Developer.

#### **8.4 Default Rights and Remedies.**

In addition to any other rights and remedies which the City may have at law or in equity, upon the occurrence of a Default which has not been cured pursuant to Article 8, paragraph 8.2, the City shall, to the fullest extent permitted by law, have each of the following rights and remedies:

- A. The right to a writ in lieu of mandamus or an injunction or other similar relief against Master Developer or Subsequent Developer for that specific property or portion of Project.
- B. The right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default.
- C. The right to terminate Master Developer's or Subsequent Developer's redeveloper's rights in that portion of the Property or part of Project.
- D. A Subsequent Developer, having been approved by the City for a specific part, portion or property(s) of the Project, who defaults or fails to perform its obligations shall not create a default or contract dispute other than with regard

to the specific property(s) it has purchased and only for its specific obligations.

E. In the event a declaration of default is disputed by a party, all times shall be tolled while the dispute is arbitrated, pursuant to the arbitration provisions of this Agreement.

F. In the event a default occurs and remains unabated, Master Developer or Subsequent Developer loses its rights as a redeveloper as of the date the notice becomes undisputed. The redeveloper rights shall not be part of or an asset of any estate of Master Developer or Subsequent Developer should they seek the protection of or declaration of the bankruptcy courts.

G. Notwithstanding anything to the contrary contained within Article 8 herein, the City shall have the right to proceed under Title 54 of New Jersey Statutes Annotated for any unpaid taxes.

#### **8.5 Notice to Mortgagee.**

Whenever the City shall deliver any notice or demand to Master Developer or Subsequent Developer with respect to any breach or default of its obligations or covenants under this Agreement or a Subsequent Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage at the last known address of such holder shown in

the land records of the County, only if the mortgagee provides the City with its name and address and outstanding account of any mortgage when executed and sent for filing to the City Manager, City Clerk and Mayor and Council.

**8.6 Mortgagee's Right to Cure Default and Assume**

**Obligations.**

After any breach or default referred to in Article 8, any holder of a construction mortgage shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to its mortgage, provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the City's approval, except to qualify them as a Subsequent Developer, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of that part of the Project. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City, to receive the certificate of occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Article 9 hereof. The City agrees to execute subordination and attornment documents that may reasonably be required by any institutional lender and further to make any

technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

**8.7 Rights of Mortgagees.**

Notwithstanding any other provision of this Agreement, the holder of any mortgage (including any such holder who obtains title to a property or any part thereof), or any other party who thereafter obtains title to the Project or such Property part or portion from or through such holder or any purchaser at foreclosure sale shall in no way be obligated by the provisions of this Agreement to construct or complete the Project except to secure and make the Project site safe, nor to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Project parcels to Master Developer or Subsequent Developer be construed to so obligate such holder, provided that nothing in this Agreement or Subsequent Agreements shall be deemed or construed to permit or authorize any such holder to devote the property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Redevelopment Plan (Plan IV) or approved by the City. Any such successor in interest shall immediately apply to the City to be approved as a Subsequent Developer.

**8.8 Bankruptcy of Master Developer.**

(a) As used herein, the following terms shall have the following meanings:

(1) The term "Bankruptcy Event" shall mean either of the following events: (i) Master Developer shall commence a case in bankruptcy, or under the insolvency laws of any state, naming Master Developer as a debtor; or (ii) any other person shall commence a case in bankruptcy naming Master Developer as a debtor, and such case shall not have been discharged within one hundred twenty (120) days of the commencement thereof.

(2) The term "Infrastructure Provisions" shall mean the provisions of Article 7 of this Agreement which deal with the rights and obligations of Master Developer with respect to the performance and completion of the Infrastructure Improvements and/or any other work which needs to be completed in order for the Subsequent Developers to (x) complete the development work on their properties, and (y) obtain all required certificates of occupancy (and/or other certificates or permits) needed for the sale, lease and/or occupancy thereof, as applicable.

(b) If a Bankruptcy Event shall occur, then, at any time thereafter (unless and until the same shall have been cured or remedied), the City may, at its option, terminate

the rights and obligations of Master Developer as Master Developer under this Agreement, by giving written notice thereof (the "Bankruptcy Termination Notice") to Master Developer. In the event that the City shall serve the Bankruptcy Termination Notice, then the following provisions shall apply:

(1) Upon the giving of the Bankruptcy Termination Notice, Master Developer shall have no further rights or obligations as Master Developer under this Agreement (and accordingly, and without limitation, Master Developer shall have no further rights or obligations under the Infrastructure Provisions). The City's termination of rights and obligations, however, shall not vitiate any claim the City may have against Master Developer as a result of Master Developer's failure to have theretofore performed its obligations under this Agreement. The status of any Subsequent Developer, as such, shall not be affected thereby.

(2) Upon the giving of the Bankruptcy Termination Notice (and unless and until a new developer is appointed for this purpose pursuant to subsection (3) below), the City, for the benefit of all Subsequent Developers (and their lenders), shall be deemed to have succeeded to all

the rights, and to have assumed all of the obligations, of Master Developer under the Infrastructure Provisions.

(3) Promptly after the giving of the Bankruptcy Termination Notice, the City shall consult with the Subsequent Developers (and, at the option of each Subsequent Developer, and its lender) to mutually agree upon the appointment of a new developer to succeed to the rights and obligations of Master Developer under the Infrastructure Provisions. The appointment of such a new developer shall require the consent of the City and a majority of the Subsequent Developers.

## **Article 9**

### **Completion of Projects**

#### **9.1 Completion of Projects (and Phases thereof)**

The parties acknowledge that the development of the Redevelopment Area contemplated hereunder shall be comprised of multiple separate Projects, some of which will, or may, consist of multiple phases. References herein to a "phase" of a Project, shall mean a portion of a Project which is susceptible of both separate ownership and independent operation (in each case, vis-à-vis the remainder of the Project).

Master Developer agrees that the expeditious completion of each Project (and, if applicable, each phase thereof) is of critical concern to the City, and Master Developer agrees to

such Project (or such part thereof) shall meet the City's requirements for the issuance of the Certificate of Occupancy (or temporary Certificate of Occupancy) as then promulgated and administered by City's buildings department or other appropriate office. Likewise, the fact no Certificate of Occupancy (or temporary Certificate of Occupancy) has been obtained, or applied for, with respect to any Project (or any part thereof), shall not (in and of itself) affect the City's right and obligation to issue a Certificate of Completion for any Project (or any applicable phase thereof).

**9.3 After Completion of a Project (or a Phase thereof).**

Promptly after the completion of the Improvements with respect to any Project (or any phase thereof) in accordance with the provisions of the Agreement, the City will furnish Master Developer (and, if applicable, the Subsequent Developer) an appropriate instrument so certifying such completion (the "Certificate of Completion"). The City's issuance of a Certificate of Completion as to any Project (or a phase thereof) shall be deemed a conclusive determination by the City that all the obligations of Master Developer (and, as applicable, the Subsequent Developer) under this Agreement as to such Project (or such phase thereof) shall have been fully satisfied. If any dispute shall arise regarding whether the Improvements relating to any Project (or phase thereof) shall have been satisfactorily

abide by any deadlines imposed upon it under this Agreement with respect to any Project or any phase thereof.

With respect to any Project (or phase thereof) that shall be undertaken by a Subsequent Developer pursuant to a Subsequent Agreement, Master Developer further agrees to set forth, in the Subsequent Agreement, which must be approved by the Agency the following:

A. The requirements and date(s) for the closing of title to the property which will be the site of the Project.

B. The time(s) for the submission of the plans and specifications that are needed for governmental approvals.

C. The time(s) for commencement of the work needed to complete the Improvements contemplated by the Project (or any phase thereof).

D. The time(s) for completion of the Project (or any phase thereof). And, if appropriate, any requirements as to the amount of units, or percentage of the total number of units in a Project, to be completed in any phase of the Project.

## **9.2 Certificate of Occupancy and Certificate of Completion**

A Certificate of Occupancy (or temporary Certificate of Occupancy) can be obtained for any Project (or any part thereof), regardless of whether the City shall have theretofore issued a Certificate of Completion for such Project (or the phase thereof in which such part thereof is located), so long as

completed in accordance with this Agreement so as to warrant or require the issuance a Certificate of Completion, then the parties agree that either party may submit the dispute to Arbitration.

#### **9.4. Effect of Certificate of Completion**

Upon the issuance of Certificate of Completion by the City for any Project (or phase thereof), the provisions of this Agreement shall no longer encumber the property comprising such Project (or phase thereof); provided, however, that nothing in this sentence shall be deemed to abrogate the provisions of any other documents theretofore delivered pursuant to this Agreement (or the COP Sale Agreements) with respect to the property comprising the Project (or phase thereof), including, without limitation (and by of example only), any deeds (inclusive of restrictions therein), declarations, certifications, tax abatement agreements, etc.

The City, at any time, and from time to time, after its issuance of a Certificate of Completion for any Project (or phase thereof), shall, within thirty (30) days following a written request by Master Developer (or any Subsequent Developer to whom such Certificate of Completion was also issued), execute and deliver to (a) Master Developer (or, as the case may be, such Subsequent Developer), and/or (b) a third party (e.g., prospective lender, purchaser, investor, tenant, etc.)

designated by Master Developer (or, as the case may be, such Subsequent Developer), an instrument in which it affirms that the Certificate of Completion has been issued (and, accordingly, that the foregoing provisions of Section 9.3 and this Section 9.4 shall apply).

**9.5. Estoppel Certificates (Prior to Certificate of Completion)**

The City, at any time, and from time to time, prior to its issuance of a Certificate of Completion for any Project (or phase thereof), shall, within thirty (30) days following a written request by Master Developer (or any Subsequent Developer to whom such Certificate of Completion was also issued), execute and deliver to (a) Master Developer (or, as the case may be, such Subsequent Developer), and/or (b) a third party (e.g., prospective lender, purchaser, investor, tenant, etc.) designated by Master Developer (or, as the case may be, such Subsequent Developer), an instrument in which it (i) certifies that this Agreement is unmodified and in full force and effect as to the property comprising the Project (excepting only modifications which shall be set forth), (ii) states whether or not, to the best knowledge of the City, Master Developer (and, if applicable, the Subsequent Developer) is in default under this Agreement as to any of its obligations which relate to, or might affect, the property comprising the Project (and, if so,

specifying each such default of which the City shall have knowledge), and (iii) confirms such other factual matters pertinent to this Agreement, as the same relate to, or might affect, the property comprising the Project, as Master Developer (or, as the case may be, the Subsequent Developer) may reasonably request.

## **Article 10**

### **Tax Abatement**

#### **10.1 Tax Abatement General**

The parties agree to adopt standard forms of tax abatement agreements to be utilized by Master Developer and Subsequent Developers.

The Agreements will provide for a means of calculating the payments in lieu of taxes so that they will generally be equivalent to fifty (50%) percent of ad valorem taxes in the City of Asbury Park in the case of residential for-sale housing.

In the case of commercial development or residential rental housing the provisions of N.J.S.A. 40A:20-12 b (1) will be used. A Developer of commercial real estate property will be able to lease said property from a related and/or wholly owned Urban Renewal Entity. The rent or "annual gross revenue" as defined by the Statute when, multiplied by fifteen (15%) percent, shall be no less than one dollar and fifty cents (\$1.50) per net leaseable square foot of rehabilitated commercial space and two

dollars (\$2.00) per net leaseable square foot for new construction of commercial space, for year 2003 subject to escalation at the same percentage as the City general tax rate each year.

**10.2 Long-Term Tax Exemption (N.J.S.A. 40A: 20-1 et seq.)**

The parties agree that they will utilize a standard form of Tax Abatement Application and Agreement, a copy of which is attached hereto as Exhibit 4.

A. For-sale residential units, in a condominium form of ownership, will utilize the provisions of N.J.S.A. 40A:20-14, but pay a minimum P.I.L.O.T of 50% of taxes otherwise due, as per the Agreement.

B. Commercial-retail space or residential rental housing will utilize the provisions of N.J.S.A. 40A:20-12.

In cases of residential projects including rentals the tax abatement agreement shall be for a period of ten (10) years from time of substantial completion of the applicable portion of the project or unit, for those projects applying during the first five (5) years.

The first year will begin upon the start of the first newly constructed residential project by a Subsequent Developer within

the Prime Renewal Area as evidenced by issuance of first building permit.

Those projects applying during years six (6) thru the end of year ten (10) will be given a tax abatement agreement for a term of five (5) years and must pay a minimum Payment in Lieu of Taxes (PILOT) of 75% of taxes otherwise due, as per the Agreement.

In no event shall a tax abatement agreement remain in effect beyond the date which is sixteen and one-half (16½) years from the final, uncontested and unappealable passage of this Agreement.

In all other cases the tax abatement agreement shall be for a period of seven (7) years from completion or occupancy of the applicable portion of the project or phase of the project during the first ten (10) year term as discussed above.

## **Article 11**

### **Government Approval**

#### **11.1 Jurisdiction**

The parties recognize that the expeditious approval of individual portions of the Project by government boards and bodies is in the best interests of the Project and will cooperate in obtaining approvals.

### 11.2 Planning Board

The City agrees to expedite review of each application submitted by Master Developer or Subsequent Developer for the Project provided they conform with the guidelines of the Plan IV. The City agrees to request special planning board meetings, the expense of which shall be borne by the applicant.

### 11.3 Technical Review Committee (T.R.C.)

The Redevelopment Plan (Plan IV) provides for a technical review committee which shall retain a licensed architect with experience in large scale development projects. The T.R.C. shall consist of eight persons; one of which shall be the council member serving on the Planning Board. There shall be a member representing the N.J.D.E.P. and a member representing the N.J.D.C.A., a professional planner, the licensed architect described above and the engineer serving the Planning Board. The Chairman of the Planning Board shall also be a member. The T.R.C. shall utilize the design standards in the Plan IV for review and comment of applications, before being reviewed by the Planning Board. The City agrees that the T.R.C. shall not impose standards or designs that will infringe on the marketability or economics feasibility of a project other than compliance with the redevelopment plan and design guidelines.

The Mayor and Council, acting as the Redevelopment Agency and the Planning Board shall first submit all site plans for

review to the T.R.C. and shall be guided by their comments. Master Developer shall have the right to appoint the seventh member to the T.R.C. The T.R.C. shall meet as often as necessary so as not to delay any application or project.

#### **11.4 Applications**

The City agrees to sign or cooperate in the submission of any appropriate applications consistent with the Plan IV and in furtherance thereof to other governmental bodies on behalf of Master Developer/Subsequent Developer or any Successor or Assignee subject to the provisions of Article 2.2.K of this agreement. Master Developer agrees that it is its responsibility to obtain all approvals, which may be necessary to commence and complete the Project. The City and Master Developer agree that Master Developer or Subsequent Developer must have sufficient interest in land comprising a Project to have standing to make all applications to any governmental body and agency for site plan, subdivision or other governmental approvals. The City will provide any written confirmation of Master Developer's right to make such applications requested by any public agency.

## **Article 12**

### **C.A.F.R.A.**

#### **12.1 Jurisdiction**

The parties recognize that the entire Redevelopment Area is subject to and under the jurisdiction of the Coastal Area Facilities Review Act N.J.S.A. 13:19-1 et seq. The City and Master Developer and/or Subsequent Developers wish to jointly apply to C.A.F.R.A. to review the entire project or part of the project in the context of the Redevelopment Plan (Plan IV) and the guidelines therein.

#### **12.2 Intentionally Deleted**

## **Article 13**

### **Affordable Housing and Community Initiative**

Master Developer and the City agree to create a source of funding for affordable housing and community initiatives outside the Prime Renewal area. Master Developer will contribute monies to be granted or loaned by the City.

The City may also use a portion of the funds to assist projects or group activities promoting economic development and community initiatives in the City, however, affordable housing will remain a priority for the use of the funds.

The City by the Mayor and Council shall assist projects and groups whose activities promote community development of the City.

Within ninety (90) days of the end of each calendar year the City shall submit a report to Master Developer specifying the use of the funds, nature of the projects funded and groups or organizations involved.

Master Developer will contribute seven million (\$7,000,000) dollars to the City subject to the provisions below. The City will use said money for the purpose of providing loans and/or grants to facilitate to the cost of affordable housing and community initiative in the City.

Master Developer shall pay to the City the sums in the manner describe below:

- a. \$250,000.00 upon the execution of this Agreement.
- b. An additional \$750,000.00 upon the sooner event:
  - i. Six months or
  - ii. A written agreement with the Department of Environmental Protection (General Permit)
- c. \$1,000,000.00 upon the issuance of the 250<sup>th</sup> residential unit building permit or within one year of the payment of the \$750,000.00 whichever occurs sooner.

- d. \$1,000,000.00 upon the issuance of the 600<sup>th</sup> residential unit building permit.
- e. \$1,000,000.00 upon the issuance of the 900<sup>th</sup> residential unit building permit.
- f. \$1,000,000.00 upon the issuance of the 1200<sup>th</sup> residential unit building permit.
- g. \$1,000,000.00 upon the issuance of the 1500<sup>th</sup> residential unit building permit.
- h. \$1,000,000.00 upon the issuance of the 2,000<sup>th</sup> residential unit building permit.

The City and Master Developer agree that the contributions are not as the result of any statutory obligation.

**13.2 Construction and Business Related Workforce**

Master Developer and Subsequent Developers will make good faith efforts to encourage residents, women and minority participation in construction and permanent job opportunities as a result of the project. Master Developer will advertise and disseminate information concerning opportunities to contractors, vendors and organizations located within the City and the County of Monmouth.

Master Developer and Subsequent Developers will actively seek qualified minority-and women-owned business enterprises, and Asbury Park-based businesses for professional services, retail, marketing, building and ground maintenance,

transportation, supply and food service. Master Developer and Subsequent Developers will use its best efforts to identify market opportunities and match them with qualified local and minority businesses. The City will use its best efforts to identify such businesses and supply Master Developer and Subsequent Developers with referrals.

#### Article 14

##### Special Improvement District (S.I.D.)

##### 14.1 Special Improvement District Legislation- N.J.S.A.

##### 40:56-65 et seq.

The Parties will cause the creation of a Special Improvement District to generally coincide with the boundaries of the Boardwalk and Prime Renewal Area. The purpose of the District will be to eventually make special assessments to be used for additional services within the Area and reimburse Master Developer for certain improvements enumerated herein. The Parties recognize that there must first be significant development to justify the creation of the District. [The SID Board governing the District, when created, shall have representation from Master Developer, the City, and residents and businesses within the S.I.D. Area.] Any special assessment shall be used to supplement existing levels of municipal services and not in lieu of.

The City and Master Developer acknowledge particular concern and attention to be devoted to the Beachfront and Boardwalk areas, particularly the regulation of parking.

The Board of trustees shall be appointed by the Mayor and Council and Master Developer with representation by Subsequent Developers as they are approved and their project(s) built. The annual budget must jointly be approved by the City and Master Developer.

## Article 15

### Developer Contributions

#### 15.1 Fees

Master Developer has previously deposited in escrow with the City the sum of One Hundred Thousand (\$100,000.) dollars which has been used for costs and professional fees incurred in the Project relating to the City's agents.

Master Developer agrees, upon written request and an accounting of funds used, to replenish same within ten (10) days. Expert and professional fees shall be reasonable and shall be utilized only with regard to properties and applications of Master Developer.

Master Developer shall be responsible for any fees incurred by the City with regard to all eminent domain proceedings, litigation, challenges to the Redevelopment Plan IV, any challenge to this Agreement and the provisions of Article 17.3.

Master Developer shall be responsible for any fees incurred by the City with regard to litigation which names both the City and Master Developer or in which Master Developer intervenes.

The City will provide a full accounting of all escrow funds utilized to date within 60 days of this Agreement and thereafter quarterly.

All monthly bills are to be reviewed and paid by Master Developer, who shall have 15 days after payment to contest same.

## **Article 16**

### **Failure of Redevelopment Plan**

#### **16.1 Challenge of Plan Adoption**

In the event a legal objection is filed to the adoption of the June 2002 Redevelopment Plan (Plan IV) which results in the delay of or uncertainty as to the ultimate passage of said Plan then the parties agree:

16.1.1 Master Developer will retain its rights and obligations under the existing M.O.U. and 1991 Plan and under this Agreement.

16.1.2. Master Developer may at its option, proceed with the development of the three "Fast Tracks" and proceed with development of the pavilion properties until the adjudication of the Plan IV.

16.2 In the event a legal objection is filed to the adoption of parts of the Redevelopment Plan (Plan IV) which

results in the delay of or uncertainty as to the ultimate passage of that part of said June 2002 Redevelopment Plan then the parties agree:

16.2.1. Master Developer may proceed, at its option, with the development of the three "Fast Tracks" to the extent allowed by law.

16.2.2 Master Developer and City will agree on what if any other part or portions of the Project can or would be developed.

16.3 In either case all rights under this Agreement, and prior Redevelopment Plans shall remain in full force and effect.

## **Article 17**

### **Miscellaneous**

#### **17.0 Arbitration Procedures**

Any Arbitration commenced pursuant to the terms of this Agreement, shall be conducted under and governed by the Commercial Financial Dispute Arbitration Rules of the American Arbitration Association and the Federal Arbitration Act by a single qualified arbitrator mutually agreed upon by the parties. The Arbitrator shall be a retired New Jersey Superior Court or Federal Court Judge. A judgment on the award may be entered in any Court having jurisdiction.

All arbitration hearings shall begin within 90 days of the demand for arbitration and all hearings shall be concluded

within 120 days of the demand for arbitration. These time limits may not be extended unless a party shows cause for the extension and then for no more than a period of 60 days. The expedited procedures set forth at Rule 51 et. seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000. The parties do not waive applicable Federal or State substantive law except as provided herein.

Notwithstanding the preceding binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after the arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self help to exercise or prosecute the following remedies as applicable: (i) all rights of self-help, including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property, (ii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing and involuntary bankruptcy proceeding; and (iii) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to the party's entitlement to such remedies is in dispute.

Each party agrees that it shall not have a remedy of punitive or exemplary damages against the other in any dispute

and hereby waives any right or claim to any punitive or exemplary damages it may have now or which may arise in the future in connection with any dispute, whether the dispute is resolved by arbitration or judicially.

The parties acknowledge that by agreeing to binding arbitration, they have irrevocably waived any right they may have to a jury trial with regard to a dispute.

**17.1 Agreement Provisions**

**17.1.1 Paragraph Headings-** The headings and numbering of paragraphs and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

**17.1.2 Governing Law-** This Agreement shall be governed by and construed under the laws of the State of New Jersey and any litigation relating to this Agreement shall be brought in this Superior Court of New Jersey and venued in the County of Monmouth Superior Court of New Jersey after the parties have availed themselves of arbitration procedures.

**17.1.3 Amendments to Agreement-** This Agreement (together with the C.O.P. Sale Agreements, the C.O.P. Net Lease and the other documents executed and delivered in connection herewith) represents the entire agreement by and between the Parties with respect to the development of the Project, the construction of the Project and the conveyance of the project parcels. No

amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the City and Master Developer with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

**17.1.4 Severability-** Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable so that such determination, unless it prohibits the conveyance of the Project parcels to Master Developer or development of the Project, shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with provisions of this Agreement.

**17.1.5 Incorporation of Recitals-** The recitals set forth in Section 1 of this Agreement are hereby incorporated by reference and are considered part of this Agreement.

**17.1.6 Cancellation of Agreements and Leases-** The City will not enter into any agreements, contracts, obligations, or leases whether oral or written which are not cancelable upon ninety (90) days notice for property within the Prime Renewal Area.

**17.1.7 Street Vacations-** The parties agree that where, in order to effectuate development within the Prime Renewal Area, a public street is necessary to be vacated and utilized, there shall be no cost for the acquisition of the bed of the former street by Master Developer. The streets intended to be vacated are listed in the Plan IV and those attached hereto in Exhibit 11. The City will submit the list to the appropriate City departments for review and approval upon execution of this Agreement.

**17.2 No Condemnation/Without Consent**

The City agrees not to condemn or take title by exercise of its eminent domain powers any portion of the Boardwalk Area or Prime Renewal Area without Master Developer's consent. Master Developer agrees to take title to all property it requests be condemned upon the execution of a Declaration of Taking and placing of a deposit with the Court.

### 17.3 Cooperation by City

In the event that a third party commences litigation or otherwise challenges the validity or legality of this Agreement and its terms or the development of the Project as provided herein, the City agrees, without cost or expense to the City other than payroll and internal administrative costs, that it will fully cooperate with and give full assistance to Master Developer in the defense or handling of such litigation or challenge, including but not limited to, cooperation with Master Developer's attorneys, consultants or other agents engaged to represent Master Developer in such action. In the event the City is required to engage outside counsel in the defense or handling of such litigation, Master Developer agrees to reimburse the City for the reasonable costs and attorneys' fees the City incurs as a result of engaging outside counsel. Any outside counsel so engaged by the City is likewise bound by the cooperation provisions of this paragraph.

### 17.4 City Consultants Reports and Services

The City makes no representations to Master Developer with respect to the accuracy or validity of any reports, data or documents or services rendered by any of the City's consultants, advisors or experts.

### **17.5 Waivers**

Any right or remedy which any party may have under this Agreement may be waived in writing by the relevant party without the execution of a new or supplemental agreement. Except as otherwise provided in this Agreement, said right of waiver shall include the right to waive a default. No waiver made by any party of any obligation with respect to the performance, or manner or time thereof, shall be considered a waiver of any rights of the party making the waiver with respect to any rights beyond those expressly waived.

Any waivers of any rights under this Agreement must be done in writing and in accordance with all statutory requirements.

### **17.6 Commissions**

The Parties agree that no commissions to any broker, agent, or any other intermediary is due hereunder, and further agree to indemnify and save harmless the other party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary.

### **17.7 No Significance of Party Drafting**

The Parties agree that in the construction or interpretation of this Agreement no significance shall be attributed in presumption or otherwise to the identity of the party drafting the provision or provisions in question.

### 17.8 Recordation

A short form memorandum of this Agreement, and any modifications thereof or additions thereto, in mutually agreeable form may be duly recorded by Master Developer 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 Master Developer.

### 17.9 Notices

Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) either: (1) by hand delivering a copy thereof to the party being served in person or by commercial courier, or by (2) facsimile, evidenced by confirmed receipt, to the person or persons set forth below for each party to this Agreement, and given to the City Clerk, to each member of the City Council, and Mayor, City Manager, City Attorney and Redevelopment Attorney or (3) By certified mail return receipt requested. Notices shall be deemed given upon receipt and shall be served upon each person in the same manner whichever of the three above means used.

### 17.10 Inability to Perform

Notwithstanding anything to the contrary contained herein, neither party hereto shall be deemed in default hereunder (nor

shall it otherwise have any liability to the other party hereto) if it is unable to perform any of its obligations hereunder by reason of one or more events of Force Majeure. Likewise, no Subsequent Developer shall be deemed in default of its obligations hereunder if it is unable to perform its obligations by reason of one or more events of Force Majeure.

Without limiting the generality of the foregoing, when a deadline imposed hereunder on either party hereto (or any Subsequent Developer) shall be extended, if Force Majeure is invoked the party seeking to enforce Force Majeure is obligated to have invoked the provision of Force Majeure as defined herein. If either party is delayed in performing any of its obligations hereunder by reason of one or more events at Force Majeure, then such party shall promptly notify the other party thereof.

Notices shall be given:

As to the City:

Mayor and City Council of City of Asbury Park, City Clerk and  
City Manager of City of Asbury Park  
Asbury Park Municipal Building  
One Municipal Plaza  
Asbury Park, NJ 07712

With a copy to:  
Ansell Zaro Grimm and Aaron  
1500 Lawrence Avenue  
Ocean, NJ 07712  
Attn: Mr. James Aaron Esq.

As to the Master Developer:  
Asbury Partners, L.L.C.  
511 Ocean Avenue, P.O. Box 80  
Lakewood, NJ 08701  
Attn: Glen Fishman

with a copy to:  
M.D. SASS  
1185 Avenue of the Americas  
New York, NY 10036  
Attn: Hugh Lamle

With a copy to:  
Alfred L. Faiella Esq.  
The Legal Center  
One Riverfront Plaza, Suite 300  
Newark, NJ 07102

Charles Kotick, Esq.  
Bryan, Cave, LLP  
1290 Avenue of the Americas  
New York, NY 10104

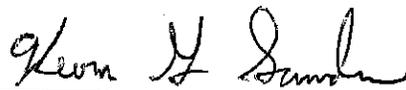
From time to time either party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days notice in advance of such change of address in accordance with the provisions hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date appearing on page one (1) hereof.

Attest:

THE CITY OF ASBURY PARK



By:   
Mayor Kevin G. Sanders

Attest:

ASBURY PARTNERS, L.L.C.

By: Ocean Front Acquisitions, L.L.C., Member



By:   
Glen A. Fishman  
Managing Member