

**CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT**

By and among:

**GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY,
GLEN COVE COMMUNITY DEVELOPMENT AGENCY,**

and

GLEN ISLE DEVELOPMENT COMPANY, LLC

Date of Agreement: as of May 14, 2003

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**CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT**

AGREEMENT (hereinafter called this "Agreement"), dated as of the 14th day of May, 2003, by and between the **GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called the "IDA"), having its office at 9-13 Glen Street, Glen Cove, New York 11542, **GLEN COVE COMMUNITY DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called the "CDA"), having its office at 9-13 Glen Street, Glen Cove, New York 11542, and **GLEN ISLE DEVELOPMENT COMPANY, LLC**, a limited liability company organized and existing under the laws of the State of New York and authorized to do business in the State of New York (hereinafter called the "Redeveloper") and having an office for the transaction of business at 9 Gerhard Road, Plainview, New York 11803. The IDA and the CDA are sometimes collectively referred to herein as the "Agencies".

RECITALS :

WHEREAS, the IDA is a New York corporate governmental agency, constituting a public benefit corporation, established by § 919 of the General Municipal Law ("GML") for the accomplishment of any and all purposes set forth in GML Article 18-A, title 1; and

WHEREAS, the CDA is a New York corporate governmental agency, constituting a public benefit corporation, established by § 580-a of the GML for the accomplishment of any and all purposes set forth in GML Article 15 and 15-A; and

WHEREAS, in furtherance of the objectives of Articles 15 and 15-A of the GML, as amended, the CDA has undertaken a program for the acquisition, clearance, re-planning, reconstruction and neighborhood rehabilitation of slum and blighted areas in the City of Glen Cove (hereinafter called "City"), and in this connection has been engaged in carrying out an urban renewal project originally known as the "Urban Renewal Plan for the Garvies Point Urban Renewal Area" (the area affected by such urban renewal plan shall hereinafter be referred to as the "Project Area"), and

WHEREAS, in accordance with Section 504 of Article 15 of the GML, as amended, the City Council of the City of Glen Cove (hereinafter called "City Council"), by resolution adopted February 8, 1977, found that the Project Area is a substandard or insanitary area and designated the Project Area as appropriate for urban renewal and the City Council approved and adopted the aforesaid urban renewal plan by resolution adopted March 22, 1977; and

WHEREAS, the City Council has amended the aforesaid urban renewal plan, by Amendment dated October, 1980, and by Second Amendment dated November 27, 1990; and

WHEREAS, a copy of the aforesaid urban renewal plan, together with the two Amendments thereto, as constituted on the date of this Agreement, has been recorded or filed in the Office of the Clerk of Nassau County on September 29, 1978 in Liber 9143 of Deeds, Page 357, April 16, 1981 in Liber 9334 of Deeds, page 825, and August 7, 1991 in Liber 10148 of Deeds, Page 525 (the urban renewal plan, as so amended, and as it may hereafter be further amended and/or reviewed from time to time

pursuant to law in a manner consistent with the Project [defined below], and as so constituted from time to time, is, unless otherwise indicated by the context, hereinafter called "Urban Renewal Plan"; and

WHEREAS, in order to enable the Agencies to achieve the objectives of the Urban Renewal Plan and particularly to make the land in the Project Area available for redevelopment by private enterprise for and in accordance with the uses specified in the Urban Renewal Plan, the Federal Government and the County of Nassau have undertaken to provide and have provided substantial aid and assistance to the IDA through a Contract for Loan Guarantee Assistance pursuant to Section 108 of the Housing and Conservation Development Act of 1974, as amended (the "Section 108 Loan"), through the Community Development Block Grant Program (the "CDBG Program"); and

WHEREAS, the Agencies have acquired certain real property in the Project Area with, in part, funds provided through the Section 108 Loan; and

WHEREAS, the Agencies have determined to sell, convey and otherwise dispose of that portion of said acquired real property (and other adjacent properties to be acquired by the IDA and/or the CDA), as more particularly described in Schedule A annexed hereto and made a part hereof (which portion of said real property as so described is hereinafter called the "Property") upon such terms and conditions as will facilitate the clearance, completion of environmental remediation, replanning, reconstruction and development of the Property and the Project Area; and

WHEREAS, the Redeveloper is willing to purchase the Property and to redevelop the Property for and in accordance with the uses specified in the Urban Renewal Plan and in accordance with this Agreement (the "Project"); and

WHEREAS, the Agencies believe that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City

and the health, safety, morals and welfare of its residents, and that it satisfies one or more of the national objectives of the CDBG Program, in that it will provide jobs to low-to-moderate income persons in accordance with the public purposes provisions of the applicable Federal, State and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the City was recognized as one of sixteen original Brownfields Showcase Communities by the federal government for its efforts to remediate and reuse polluted sites. As part of the "Showcase" initiative the Agencies received a Brownfields Economic Development Initiative grant and was loaned the Section 108 Loan that was used for acquisition, remediation and site preparation of the Property; and

WHEREAS, the Agencies desire that the Property be redeveloped in substantial harmony with a variety of the Agencies' goals all as more fully set forth in Section 2.01 below (the "Project Goals") that are intended to promote a sustainable redevelopment of the Property that is consistent with the Project Goals and that completes the environmental remediation of the Property in a manner that optimizes the Purchase Price [defined below] to be paid therefor; and

WHEREAS, the Agencies believe that updated planning, economic, feasibility, environmental and other studies of the proposed redevelopment of the Property are essential in order to plan and finalize the details of the redevelopment; and

WHEREAS, the Agencies are requiring the Redeveloper to conduct and pay for such studies on behalf of the Agencies and the Redeveloper is willing to do so all as set forth below; and

WHEREAS, based upon such studies, the Agencies and the Redeveloper intend to reach agreement upon a Final Development Plan [defined below] that sets forth all of the elements and detail of the proposed redevelopment of the Property on the terms and conditions set forth herein; and

WHEREAS, the Redeveloper was duly designated by the IDA by resolution adopted on May 13, 2003 as a qualified and eligible redeveloper; and

WHEREAS, the IDA, by resolution adopted on May 13, 2003, duly approved the sale of the Property to the Redeveloper, on the terms and conditions set forth herein, for a projected purchase price of Twenty Million Five Hundred Thousand and 00/100 (\$20,500,000.00) Dollars, such amount to be adjusted as provided herein; and

WHEREAS, the CDA, by resolution adopted on May 13, 2003, duly approved its execution and performance of this Agreement; and

WHEREAS, in view of the fact that the IDA owns the substantial majority of the Property and this Agreement contemplates that the IDA will convey the Property to the Redeveloper, for purposes of the administration of certain of its rights under the Agreement, the CDA has authorized the IDA to receive and give certain notices and approvals on behalf of the CDA as provided below.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

Article 1 GOOD FAITH DEPOSIT.

1.01. Amount. The Redeveloper shall deliver to the Escrow Agent named in Section 5.02, for the benefit of the IDA on behalf of the Agencies, a good faith deposit of One Million and 00/100 (\$1,000,000.00) Dollars, hereinafter called the "**Deposit**", in the form of (i) cash, to be delivered prior to or simultaneously with the execution of this Agreement by the Agencies or (ii) by an irrevocable and unconditional letter of credit in form and substance satisfactory to the IDA in its sole and absolute discretion, to be delivered within twenty (20) business days following the execution of this Agreement by the Agencies, time being of the essence, (in which event the fully executed copies of this Agreement shall

be held, in escrow, by the Escrow Agent and shall become effective only upon the Redeveloper delivering such unconditional letter of credit to the IDA within such twenty (20) business days, and upon delivery of the unconditional letter of credit, the Escrow Agent shall release the executed copies of this Agreement from escrow and distribute them to the Agencies and the Redeveloper, and thereupon this Agreement shall be in full force and effect). The Deposit shall not be credited against the Purchase Price and shall either be retained by the IDA (as set forth in Section 1.03 hereof) or returned to the Redeveloper (as set forth in Section 1.04 hereof).

1.02. Interest. If the Deposit is delivered to the IDA in the form of cash, it shall be delivered to the Escrow Agent to be held pursuant to the Escrow Agreement referred to in Section 5.02. In the event the Deposit is returned to the Redeveloper as herein provided, all interest earned to that date shall be paid to the Redeveloper. In the event the Deposit is retained by the IDA, as herein provided, the IDA shall retain the interest, as its own, without any offset or recoupment.

1.03. Retention by IDA. The Deposit, with any interest earned thereon, shall be retained by the IDA (a) upon termination of this Agreement as provided in Section 14.06 hereof; or (b) upon revesting of title as provided in Section 14.07 hereof. The provisions of this Section shall survive the Closing or other termination of this Agreement.

1.04. Return to Redeveloper.

(a) The Deposit, with any interest earned thereon, shall be returned promptly to the Redeveloper as follows: (i) in the event the IDA terminates this Agreement pursuant to Section 3.04(a) hereof; (ii) in the event the Redeveloper terminates this Agreement pursuant to Section 3.04(b) hereof; or (iii) in the event the Redeveloper terminates this Agreement as provided in Section 5.02, 6.11, 14.02 or 18.04 hereof.

(b) In addition to the foregoing, the Deposit, together with any interest thereon, shall be returned within thirty (30) days after the Redeveloper is entitled to issuance by the IDA of a Certificate of Completion (as set forth in Section 9.05 hereof); provided, however, that in this event the Redeveloper must also have complied in all material respects with all of its prior obligations set forth in this Agreement. In the event that a non-material portion of the Improvements [defined below] (as determined by the IDA in its reasonable judgment) are not timely completed by reason of an event described in Section 18.02, and the Redeveloper is otherwise entitled to the return of the Deposit, then the Deposit will be returned except for that portion which represents 200% of the cost, as reasonably determined by the IDA, to complete the incomplete Improvements.

(c) The provisions of this Section shall survive the Closing or other termination of this Agreement.

Article 2 DEVELOPMENT PLAN

2.01. Project Goals. The Agencies and the Redeveloper have agreed that the Final Development Plan (as defined in Section 2.04 hereof) shall require that the Project be constructed and operated pursuant to the following “smart growth” principles (collectively, the “**Project Goals**”), which Project Goals may be modified, from time to time, upon mutual agreement of the Agencies and the Redeveloper:

(i) To complement and minimize duplication of and competition with existing City facilities, businesses, enterprises, services and uses in the Glen Cove downtown business district;

(ii) To provide needed or desirable additional facilities, businesses, enterprises and services to the City;

- (iii) To insure maximum public access to the waterfront, including access to water bodies to enhance recreational opportunities and daily life;
- (iv) To rehabilitate and redevelop the waterfront given its history of neglect and environmental contamination, while seeking to develop the Property in an environmentally responsible manner consistent with the public interest;
- (v) To embrace an aesthetically pleasing waterfront theme in harmony with the natural environment and surrounding residential neighborhood;
- (vi) To insure the marketability of the development and the Project's long term viability and financial success;
- (vii) To promote the image of the City as a waterfront community;
- (viii) To gain broad public acceptance and support;
- (ix) To provide a project which considers the City of Glen Cove's local water revitalization plan (the "LWRP"), subject to Section 6.04 hereof, and such other rules, regulations, ordinances, agreements and other existing land use regulatory documents relating to the proposed use of the Property and the proposed Project, all as such may be amended, modified or supplemented in order to permit construction of the Project in accordance with the Final Development Plan;
- (x) To enhance revenue to the City and the Agencies;
- (xi) To ensure revenue produced from the Project exceeds expenses incurred for municipal services provided to the Project; and
- (xii) To optimize the purchase price for the Property consistent with the impact of its existing environmental condition.

2.02. Development Concept. Notwithstanding anything to the contrary contained herein, the Redeveloper has proposed that the Project contain: (a) a branded hotel, with not greater than 250 keys, marina, conference, catering and spa facilities, and not greater than 100 associated residential units; (b) a commercial and retail component of not greater than 250,000 square feet; (c) a cultural/entertainment/parkland component of undetermined scope, in addition to the pedestrian walkway currently located at the Property; and (d) not greater than 350 residential units in addition to the residential units associated with the hotel unless the Consultants [defined below] recommend a lesser amount of residential units or an alternative use; provided, however, the Final Development Plan is subject to the approval of the Agencies, as set forth in this Article. Project elements described in clauses (a) – (d) above are collectively referred to herein as the “**Development Concept**”.

2.03. Planning, Economic, Environmental, etc. Studies. Prior to the conveyance of the Property by the Agencies to the Redeveloper, in order to assist the Agencies and the Redeveloper in finalizing the Final Development Plan in substantial harmony with the Project Goals, and to advance the funds necessary therefor on behalf of the Agencies, the Redeveloper, at its sole cost and expense as provided herein, shall retain one or more consulting firms, acceptable to the IDA (collectively, the “**Consultants**”), to conduct promptly and/or update existing planning, economic, feasibility, environmental, transportation, engineering and other studies (collectively, the “**Studies**”). The Agencies and the Redeveloper shall cooperate in good faith to reach agreement on the scope of the Studies. The reports based upon the Studies shall be completed and delivered to the IDA and the Redeveloper within a timeframe that is presently expected to be completed within six (6) months after the Consultants are retained, which completion date may be extended by mutual agreement of the parties. The Agencies and the Redeveloper shall cooperate to facilitate the consulting process, to respond to inquiries and requests

for information, consents and approvals in order to complete the consulting process within the agreed upon timeframe.

2.04. Final Development Plan Consulting Process.

(a) Using the Development Concept as a baseline, the Consultants will be expected to acquire necessary data and analyze and report their conclusions and recommendations regarding the appropriateness of the Development Concept to maximize the prospects for realization of the Project Goals. The Consultants will not be encouraged to depart from the general scope of the Development Concept, but are expected to analyze the stated proposal, to update existing planning, economic and environmental studies previously commissioned by the City and the Agencies, to suggest refinements or adjustments, identify and resolve foreseeable problems or difficulties with the proposal and, if warranted, to advance and support any Consultants-suggested refinements or modifications to the Development Concept to achieve the Project Goals. The IDA and the Redeveloper shall cooperate in good faith and shall consult with the Consultants as needed in order to identify any potential issues or problems which have the potential to delay, disrupt or otherwise impact the completion or the scope of the Project, including IDA concerns regarding the provisions of Section 2.05.

(b) Based upon consultations with the IDA and the Redeveloper, the Consultants will be expected to develop a detailed and fully supported final project development plan for consideration and approval by the Agencies and the Redeveloper. Promptly after preliminary approval by the IDA and the Redeveloper of the final project development plan through oral discussions by and among the IDA, the Redeveloper and the Consultants, the Consultants shall furnish final written reports, consistent with such oral discussions, describing in detail the project development plan to be approved and agreed to by the Agencies and the Redeveloper as provided in Section 2.09 (the "**Final Development**

Plan"). The Final Development Plan will be accompanied by a scale model of the Project and rendered elevations prepared by the Consultants.

2.05. Character of the Project. The aesthetic/architectural character of the Project is a priority for the IDA, and public access to the waterfront is required. In addition to its right of approval of the Final Development Plan, as set forth in Section 2.09 hereof, the IDA, in its sole and absolute discretion, shall have an unconditional right of approval of: (a) the site plan (which shall include, *inter alia*, the placement of each project element as proposed by the Consultants), (b) the architectural elevation renderings, and (c) the aesthetic/architectural aspects of the design and the construction of the Project. To the extent the matters described in (a), (b) and (c) are embodied in the Final Development Plan, approval of the Final Development Plan shall be deemed approval of such matters. The IDA, in granting such approval of the aesthetic/architectural aspects of the design and the construction of the Project, shall delineate those aesthetic/architectural aspects of the Final Development Plan it deems material to said approval (the "**Material Aspects**"). All building plans submitted by the Redeveloper to the Planning Board of the City of Glen Cove ("**City Planning Board**") and Building Department of the City of Glen Cove ("**City Building Department**") for approval shall not deviate from the Final Development Plan approved by the IDA with respect to the Material Aspects. The Redeveloper and the IDA agree to provide the Consultants with the parameters of such aesthetic/architectural aspects (including, without limitation, item (v) of the Project Goals set forth in Section 2.01 hereof) at an early stage in discussions with the Consultants in order to ensure that the Consultants' work product is consistent therewith. In addition to the pedestrian walkway already under construction, the cost of which shall be borne by the IDA to the extent of and in accordance with the current plans of the IDA for such walkway, the Redeveloper shall provide other public access/space, as well as a "green buffer", along the

western edge of the Captain's Cove property fronting Hempstead Harbor, to be reflected in the Final Development Plan. The IDA shall be solely responsible for the maintenance, upkeep, repair and replacement of the pedestrian walkway after Closing [defined below]. The provisions of this Section shall survive the Closing.

2.06. Residential Component of Final Development Plan.

(a) If any residential component (exclusive of the residential units associated with the hotel) in the Final Development Plan (the "**Residential Component**") contains rental apartments, the IDA shall have the absolute right, in its sole and absolute discretion, to approve the number of rental apartments contained in the Residential Component.

(b) If the Residential Component consists of 350 units or less, the IDA shall have the right to approve, such approval not to be unreasonably withheld, the mixture of the size of units (e.g., studio apartments, one bedrooms, two bedrooms, three bedrooms, etc.); if the Residential Component is greater than 350 units, the mixture of the size of all units in excess of 350 shall be subject to the approval of the IDA, which approval shall be granted or withheld in the sole and absolute discretion of the IDA.

(c) To the extent the Redeveloper, due to unforeseen material adverse changes in the market for same, is unable to sell any of the units designated for sale (as opposed to IDA approved rental units) ("**Units Designated for Sale**"), within six (6) months after completion of construction of any building containing Units Designated for Sale (a "**Completed Residential Building**"), provided the Redeveloper uses commercially reasonable best efforts to market such Units Designated for Sale for a period of not less than six (6) months, the Redeveloper shall be entitled to lease unsold Units Designated for Sale in such Completed Residential Building. All such leases of the Units

Designated for Sale shall have an initial term of not greater than two (2) years and the Redeveloper shall continue to use commercially reasonable best efforts to market any such Units Designated for Sale during the term of such lease.

(d) The provisions of this Section shall survive the Closing or other termination of this Agreement.

2.07. Studies and Reports. Copies of all Studies and other reports paid for by Redeveloper with funds accountable for as Redeveloper-Paid Agency Costs (defined in Section 14.02) shall be furnished to the IDA promptly after receipt thereof by the Redeveloper.

2.08. Retail Component of Final Development Plan. With respect to the retail component of the Final Development Plan, prior to completion of construction of the retail portion of the Project and for a period of six (6) months thereafter, the IDA shall have the right to approve the type of use by any prospective retail tenants (as set forth in a proposed lease agreement), which approval shall be in the IDA's sole and absolute discretion during such period; provided, however, such approval of the IDA shall not be required in the event any such proposed use is consistent with the retail uses contemplated for the Project as set forth in the Final Development Plan. All uses by such retail tenants shall be consistent with all applicable zoning rules, regulations and ordinances. The provisions of this Section shall survive the Closing.

2.09. Approval of the Final Development Plan.

(a) The Agencies shall each have the right, in their sole and absolute discretion, to approve or disapprove the Consultants' recommended Final Development Plan; provided, however, notwithstanding anything to the contrary contained herein (but subject to the approval rights of the IDA set forth in Section 2.05 hereof), if the Consultants' recommended Final Development Plan is consistent

with and contains each of the elements as described in clauses (a) – (d) of Section 2.02, the Agencies' approval shall not be unreasonably withheld or delayed.

(b) If the Consultants' recommended Final Development Plan is consistent with and contains each of the elements as described in clauses (a) – (d) of Section 2.02, the Redeveloper's approval shall not be unreasonably withheld or delayed. If such recommendation proposes a lesser number of residential units or smaller size of any non-residential Project element than that reflected in the Development Concept, the Redeveloper may elect to construct a number of residential units or other elements of different size not greater than the number of residential units or size of other elements than that reflected in the Development Concept. Notwithstanding the Consultants' recommendations, the Agencies and the Redeveloper may agree, in each party's sole and absolute discretion, upon a Final Development Plan that departs from such recommendations. Notwithstanding anything to the contrary contained herein, Redeveloper shall not be obligated to approve the Consultants' recommended Final Development Plan or to close title or construct the Project if the Consultants conclude that a Project consistent with the Development Concept will not produce a marketable development or a Project likely to achieve long term viability and financial success.

(c) The Agencies' approval of the Final Development Plan shall be evidenced in the form of formal written resolutions approved at duly noticed public meetings. The Redeveloper shall evidence its approval of the Final Development Plan in a writing sent to the Agencies prior to such meetings.

2.10. Infrastructure. The City shall be responsible for and shall construct and complete the road improvement project outside the Property (the "**Off-Site Infrastructure**") as described in the Final Development Plan, which, *inter alia*, shall conform to customary design criteria for four (4) lane

public thoroughfares. The City has applied for various grant monies to the extent they are available for the Off-Site Infrastructure and the Redeveloper shall cooperate with the City in the City's applications for such grant monies. The Final Appraised Value (defined in Section 3.01 hereof) contemplates that none of the Off-Site Infrastructure costs (the "Off-Site Infrastructure Costs") will be payable by the Redeveloper. Except as otherwise provided in Article 17, all on-site infrastructure and associated costs of the Project, i.e., those to be located within the Property, including, without limitation, all internal road and parking facilities, storm water drainage systems, utility costs, including, without limitation, sewer, water, electricity, telephone and gas upgrades, will be the sole responsibility of the Redeveloper. The Agencies will cause the Off-Site Infrastructure to be constructed in such manner and at such times as will provide access to the Property for the Redeveloper's construction activities, not unreasonably delay the Redeveloper's activities at the Property and will otherwise be reasonably compatible with the construction schedule of the Project and the Redeveloper will cooperate with the IDA and the City in such regards. The IDA may elect to have some or all of such Off-Site Infrastructure Costs borne by the Redeveloper and provide credit against the Purchase Price for such Off-Site Infrastructure Costs as provided in Section 3.05. The provisions of this Section shall survive the Closing or other termination of this Agreement.

2.11. Storm Water Treatment. The Redeveloper shall be responsible, at its sole cost and expense, to provide storm water treatment at the Property (other than that included in the Off-Site Infrastructure), which treatment shall be in compliance with, and consistent with, any and all applicable City, EPA and DEC guidelines and regulations. The provisions of this Section shall survive the Closing.

2.12. Relocation of Angler's Club. The Redeveloper and the Agencies shall work together, in good faith, to relocate the Angler's Club to a facility comparable with its existing location at

Glen Cove Creek (excluding the boat ramp) on the Property, the financial impact of which relocation shall be reflected in the Final Appraised Value [defined below]. The Minimum Purchase Price set forth in Section 3.03(a) hereof shall be reduced by the amount of such financial impact.

2.13. Ferry License Agreement.

(a) Pursuant to a ferry license agreement (the "License Agreement") with Fox Navigation (together with any successor, the "Ferry Operator"), the Ferry Operator is required to operate a commuter ferry from the Property to Manhattan. This service has been interrupted by the Ferry Operator and the IDA has given notice of default under the terms of the License Agreement. The IDA is currently in discussions with the Ferry Operator, in which the Redeveloper shall be invited to participate as it may elect, regarding the resumption of service and potential modifications to the License Agreement that may affect future operations and the obligations of the IDA as hereinafter set forth. The IDA and the Redeveloper shall work together to insure that the discussions with the Ferry Operator result in an agreement, with the Ferry Operator, satisfactory to the IDA and the Redeveloper, that does not interfere with the Final Development Plan or delay Closing and the Redeveloper shall cooperate with the IDA to achieve such result. Notwithstanding the foregoing, the IDA and the Redeveloper acknowledge that a ferry terminal, with parking, shall be located on the Property.

(b) The Redeveloper shall have no right to approve the Ferry schedule or the monetary arrangements between the IDA and the Ferry Operator. The Redeveloper shall not unreasonably withhold its approval of IDA proposed arrangements or modifications to an agreement with the Ferry Operator to the extent that they are compatible with the needs of the Project.

(c) The provisions of this Section shall survive the Closing.

2.14. Dredging of Glen Cove Creek. The Property is located adjacent to a US Army Corps of Engineers' (USACE) project, which contemplates dredging of the Glen Cove Creek navigational channel to a depth of 8 (eight) feet plus a 2 (two) foot "overdredge". Accordingly, the Agencies shall endeavor to cause the USACE to accomplish the dredging of Glen Cove Creek's navigational channel to the stated project depth as promptly as possible, but as this project is not under the control of the City or the Agencies, such dredging shall not be a condition to the closing. Notwithstanding the foregoing, the Agencies shall promptly provide information to the Redeveloper as to the current extent of the completed dredging and the prospects and projected timetable for completion of the required dredging and shall keep the Redeveloper informed of all dredging activities and such prospects and timetable.

2.15. Surrounding Properties. The Agencies recognize the importance to the completion of the Project in accordance with the Final Development Plan of the potential acquisition and incorporation into the Project of adjacent and/or nearby property. If requested by the Redeveloper (as a sponsor), and at the Redeveloper's sole cost and expense (including any and all acquisition, legal and consulting, and relocation costs and expenses), the Agencies shall consider the appropriateness, through exercise of their power of eminent domain, of the acquisition, dismantling and removal of properties located adjacent and/or nearby to the Property (subject to the requisite legal findings, determinations and requirements of the Eminent Domain Procedure law) on behalf of the Redeveloper. The Agencies shall take full account of the Consultants' recommendations in this regard. The provisions of this Section shall survive the Closing or other termination of this Agreement.

2.16. Sea Cliff Memorandum of Understanding. The Redeveloper understands that the City entered into a certain Memorandum of Understanding (the "Sea Cliff MOU") with the Village of

Sea Cliff relating to the Property and the IDA and the Redeveloper will review the GEIS [defined below] and any supplements thereto, as they relate to the Final Development Plan.

2.17. Environmental Impact Assessments.

(a) The Redeveloper shall retain the environmental consultant retained by the City in the preparation of the Generic Environmental Impact Statement affecting the Property (the "GEIS") prepared with respect to the Property (or such other consultant acceptable to the City, the IDA and the Redeveloper), a copy of which Redeveloper hereby acknowledges having received, for the preparation of "site specific" revisions or supplements to the GEIS. Said revisions or supplements shall address, *inter alia*, site specific issues (e.g., storm water drainage) or uses not contemplated in the GEIS.

(b) Except as provided in Article 17, the cost of any such revisions or supplements to the GEIS as a result of the Project and the cost of all additional environmental review necessitated by any such revisions or supplements shall be borne entirely by the Redeveloper, including, without limitation, any revisions or supplements required by virtue of any requisite modifications to the zoning ordinance. The City Council or the City Planning Board shall serve as lead agency for the preparation and approval of any and all revisions or supplements to the GEIS.

2.18. Redeveloper's Access to Property.

Prior to the conveyance of the Property by the Agencies to the Redeveloper, the Agencies shall use their respective best efforts to afford representatives of the Redeveloper access to any part of the Property as to which the Agencies hold title and shall expend their diligent reasonable efforts to secure such access to adjoining and nearby properties, at all reasonable times, for the purpose of obtaining data and making various tests and inspections concerning the Property necessary to carry out the intent of this Agreement. The Redeveloper shall indemnify and hold the Agencies harmless from and

against all claims, damages, liabilities, losses and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which result from negligent acts or omissions, willful misconduct or illegal acts of the Redeveloper or its representatives. Upon completion of any of such tests and inspections, the Redeveloper, at its sole cost and expense, shall restore the Property to substantially the same condition in which it existed prior to the commencement of such tests and inspections. Prior to its entry onto the Property, the Redeveloper shall, or shall cause its representatives to, deliver to the Agencies, as appropriate, for the Agencies' reasonable approval, and thereafter maintain, policies of comprehensive general liability insurance in such amounts, covering such risks and in such form as is customary and appropriate, with respect to such entry, inspections, tests and surveys.

2.19. Sewer Treatment Facility. Prior to Closing and as a condition to the Redeveloper's obligation to close title, the City of Glen Cove Sewer Treatment Plant fronting on Glen Cove Creek shall have been upgraded to address any potential odor emanations from such plant in accordance with an existing plan to be furnished to and approved by the Redeveloper within ninety (90) days after the date hereof, such approval not to be unreasonably withheld or delayed.

2.20. Documentation of Redeveloper-Paid Agency Costs. Redeveloper shall, within thirty (30) days after the end of each month during which it is invoiced for or incurs Redeveloper-Paid Agency Costs, provide the IDA with copies of each such invoice or other reasonable evidence of Redeveloper's incurrence thereof, all of which costs are subject to the reasonable review and verification of the IDA. To the extent the IDA disputes any Redeveloper-Paid Agency Costs, it shall promptly notify the Redeveloper of the basis and reasons for such dispute. If the parties are unable to agree on any disputed Redeveloper-Paid Agency Costs, they shall appoint a mutually acceptable third party promptly to resolve such dispute. Any invoice or incurred charge not disputed by the IDA within thirty (30) days

after the underlying invoice or evidence of incurrence is provided to the IDA shall become final and binding on the parties as a Redeveloper-Paid Agency Cost.

Article 3 **PURCHASE PRICE**

3.01. Purchase Price.

(a) Subject to all the terms, covenants, and conditions of this Agreement, the IDA will sell the Property to the Redeveloper, and the Redeveloper will purchase the Property from the IDA, for a purchase price projected to be in the amount of Twenty Million Five Hundred Thousand and 00/100 (\$20,500,000.00) Dollars (the "**Projected Purchase Price**"); provided, however, the purchase price to be paid by the Redeveloper shall be determined as set forth in subparagraph (b) below.

(b) Appraisals.

(i) Selection of Appraisers. Within ninety (90) days after the date of this Agreement, the Redeveloper and the IDA shall each select an independent real estate appraiser and shall give a written notice to the other designating its appraiser for the purpose set forth herein. Each appraiser chosen, including any third appraiser required to be appointed pursuant to this subparagraph, shall be an MAI appraiser with at least ten (10) years experience in appraising substantially similar types of the various components contemplated in the Development Concept in the Long Island/Westchester/Southern Connecticut geographic area. Within thirty (30) days after the selection of such two (2) appraisers, said appraisers shall select a third appraiser. If the first two appraisers shall fail to agree upon the appointment of a third appraiser, such appointment shall be made pursuant to the rules then in effect of the American Arbitration Association or any successor organization. The Redeveloper and the IDA shall pay the fees and expenses of their respective appraisers and shall jointly engage and equally share the fees and expenses of the third appraiser. The parties acknowledge that Hospitality

Valuation Services, Inc. ("HVS") has been retained by the Redeveloper to consult with Redeveloper regarding the hotel component of the Development Concept and that HVS has performed similar services for the IDA for the Property. The parties agree that their respective appraisers will rely on HVS's conclusions regarding the valuation of the hotel component unless said conclusions are not satisfactory to either appraiser in its respective sole discretion, in which case each appraiser may use its own method or consultant to determine the valuation of the said hotel component.

(ii) Appraisals. In order to facilitate and expedite the valuation process, the two appraisers shall cooperate and consult with each other throughout the appraisal process, in good faith, to determine common ground rules, appraisal methods and assumptions to be employed in the valuation of the Project and to identify and resolve any potential issues or problems which have the potential to delay, disrupt or otherwise impact the appraisal process and the completion of the Project. The third appraiser shall be advised of and shall employ such agreed upon ground rules, appraisal methods and assumptions. Within sixty (60) days after the approval of the Final Development Plan, as set forth in Section 2.09 hereof, the two appraisers shall submit to their respective clients, in writing (the "Appraisals"), their respective estimates of the fair market value ("**Fair Market Value**") of the Property, as the Property is to be developed in accordance with the Final Development Plan, and the anticipated zoning parameters of the Property, taking full account of all costs of whatever nature, incurred and projected to be incurred by the Redeveloper in executing the Project, other than costs to be deducted from the Purchase Price pursuant to sub-section 3.01(iv) hereof. In their determination of the Fair Market Value, the two appraisers shall assume that (i) the Off-Site Infrastructure has been completed and is in place, (ii) no aspect of the Project, as set forth in the Final Development Plan, requires any further environmental remediation beyond that environmental remediation set forth in

Article 17 hereof (the cost of which is a reduction from the Final Appraisal Value as set forth in Section 3.01(b)(iv)), (iii) that the environmental insurance contemplated in Article 17 is in place and (iv) that no indemnity from the Agencies is being provided to the Redeveloper with respect to environmental issues affecting the Property. The appraisers shall rely on construction cost estimates furnished by the Consultants, unless such estimates are not satisfactory to either appraiser, in its respective sole discretion, in which case each appraiser may use its own method or consultant to determine construction costs. Fair Market Value shall be determined by the appraisers on the basis of, and shall mean the aggregate amount which would be obtainable in an arms' length transaction between an informed and willing seller under no compulsion to sell, and an informed and willing purchaser under no compulsion to purchase, for the unimproved Property, as the Property is to be developed in accordance with the Final Development Plan and given the zoning parameters of the Property.

(iii) Final Appraised Value. Prior to submitting their Appraisals, the two appraisers shall meet to discuss their tentative findings. Within thirty (30) days after the Appraisals are submitted, the parties shall meet to compare such estimates and if such estimates differ from each other by ten percent (10%) or less of the higher value, the Fair Market Value of the Property shall be the average of such two Appraisals. If such estimates differ from each other by more than ten percent (10%) of the higher value, the third appraiser shall be given sixty (60) days to select one of the two estimates of Fair Market Value of the Property proposed by the two originally selected appraisers (i.e., "baseball style arbitration"). Such decision of the third appraiser shall be binding and conclusive upon the Redeveloper and the IDA. The Fair Market Value, either the average estimate of the first two appraisers, or as determined by the third appraiser, as the case may be, shall hereafter be referred to as the "Final Appraised Value."

(iv) Purchase Price. The purchase price for the Property shall be the Final Appraised Value reduced by: (a) any Off-Site Infrastructure Costs imposed on the Redeveloper by the IDA as referred to in Section 3.05 hereof; and (b) the estimated costs of any additional environmental investigation and remediation and any environmental insurance costs (all as set forth in Article 17 hereof) incurred or reasonably expected to be incurred by the Redeveloper (the Final Appraised Value, less (a) and (b) above, which may be confirmed in a notice from any party to the others, is hereinafter referred to as the "Purchase Price").

3.02. Payment of Purchase Price. The Purchase Price shall be paid by certified check or bank draft to the order of the IDA drawn on a bank licensed to do business in the State of New York, subject to collection, or by wire transfer simultaneously with the delivery of the Deeds (defined in Section 7.01 hereof) conveying the Property to the Redeveloper.

3.03. Minimum Purchase Price; Maximum Purchase Price.

(a) Subject to Section 3.04 hereof, and as otherwise provided herein, Twelve Million Five Hundred Thousand and 00/100 (\$12,500,000.00) Dollars is referred to herein as the "Minimum Purchase Price"; provided, however, the amount of any credits to or deductions from the Purchase Price required by Sections 2.12, 3.05 and the last sentence of Section 17.07(b), shall be ignored solely for the purpose of determining whether the Purchase Price, before any such deductions or credits, is less than the Minimum Purchase Price. Nothing in this Section or otherwise shall affect the parties' rights or obligations to grant and receive the benefit of such credits or deductions, the full amount of which shall be deductions from or credits against the Purchase Price as contemplated by Sections 3.05 and Article 17.

(b) Subject to Section 3.04 hereof, Twenty Six Million and 00/100 (\$26,000,000.00) Dollars is referred to herein as the "Maximum Purchase Price".

3.04. Alternative Purchase Price. Notwithstanding anything to the contrary set forth herein:

(a) In the event the Purchase Price, as determined pursuant to Section 3.01(b) hereof, is less than the Minimum Purchase Price (the "Decreased Purchase Price"), the IDA shall have the option, to be elected within thirty (30) days after the determination of the Purchase Price, to either (i) notify the Redeveloper that the IDA elects to sell the Property for the Decreased Purchase Price, or (ii) notify the Redeveloper that the IDA elects not to sell the Property for the Decreased Purchase Price and thereupon cancel this Agreement (such notice, the "IDA Election Notice"). In the event the IDA fails to timely send the IDA Election Notice to the Redeveloper, the IDA shall be deemed to have elected to cancel this Agreement. In the event the IDA elects to cancel this Agreement pursuant to the IDA Election Notice, or is deemed to have canceled as aforesaid, as the case may be, the Redeveloper shall have the option to nullify such cancellation by notifying the IDA (the "Redeveloper Acceptance Notice"), within thirty (30) days after (x) the receipt by the Redeveloper of the IDA Election Notice that the IDA has elected to cancel this Agreement, or (y) the date the IDA is deemed to have cancelled this Agreement, as the case may be, that the Redeveloper agrees to purchase the Property from the IDA for the Minimum Purchase Price, in which event the IDA shall sell the Property to the Redeveloper for the Minimum Purchase Price. If the Redeveloper fails to send the Redeveloper Acceptance Notice within such thirty (30) day period, the IDA shall have the right, within fifteen (15) days after the expiration of such thirty (30) day period, to notify the Redeveloper (the "Decreased Purchase Price Notice") that it has elected to sell the Property for a Purchase Price equal to the Decreased Purchase Price, in which event the Redeveloper shall purchase the Property from the IDA for the Decreased Purchase Price. In the event the IDA fails to send the Decreased Purchase Price Notice within such fifteen (15) day period, this Agreement shall be deemed cancelled, in which event the Deposit and the Reimbursable Amount

[defined below] shall be returned to the Redeveloper as provided in Article 14, the Redeveloper shall have the other rights provided in Article 14, and neither the IDA nor the Redeveloper shall have further rights against or liability to the other under this Agreement, except for those provisions which are specifically set forth in this Agreement to survive the termination of this Agreement.

(b) In the event the Purchase Price, as determined pursuant to Section 3.01(b) hereof, is greater than the Maximum Purchase Price (the "**Increased Purchase Price**"), the Redeveloper shall have the option, to be elected within thirty (30) days after the determination of the Purchase Price, to either (i) notify the IDA that the Redeveloper elects to purchase the Property for the Increased Purchase Price, or (ii) notify the IDA that the Redeveloper elects not to purchase the Property for the Increased Purchase Price and thereupon cancel this Agreement (such notice, the "**Redeveloper Election Notice**"). In the event the Redeveloper fails to timely send the Redeveloper Election Notice to the IDA, the Redeveloper shall be deemed to have elected to cancel this Agreement. In the event the Redeveloper elects to cancel this Agreement pursuant to the Redeveloper Election Notice, or is deemed to have canceled as aforesaid, as the case may be, the IDA shall have the option to nullify such cancellation by notifying the Redeveloper (the "**IDA Acceptance Notice**"), within thirty (30) days after (x) the receipt by the IDA of the Redeveloper Election Notice that the Redeveloper has elected to cancel this Agreement or (y) the date the Redeveloper is deemed to have cancelled this Agreement, as the case may be, that the IDA agrees to sell the Property to the Redeveloper for the Maximum Purchase Price, in which event the Redeveloper shall purchase the Property for a Maximum Purchase Price. If the IDA fails to send the IDA Acceptance Notice within such thirty (30) day period, the Redeveloper shall have the right, within fifteen (15) days after the expiration of such thirty (30) day period, to notify the IDA (the "**Increased Purchase Price Notice**") that it has elected to purchase the Property for a Purchase

Price equal to the Increased Purchase Price, in which event the IDA shall sell the Property to the Redeveloper for the Increased Purchase Price. In the event the Redeveloper fails to send the Increased Purchase Price Notice within such fifteen (15) day period, this Agreement shall be deemed cancelled, in which event the Deposit and Reimbursable Amount shall be returned to the Redeveloper as provided in Article 14, the Redeveloper shall have the other rights provided in Article 14, and neither the IDA nor the Redeveloper shall have further rights against or liability to the other under this Agreement, except for those provisions which are specifically set forth in this Agreement to survive the termination of this Agreement.

3.05. Off-Site Infrastructure Costs. Notwithstanding anything to the contrary set forth herein, to the extent that the Agencies elect, prior to Closing, to have some or all of the Off-Site Infrastructure Costs borne by the Redeveloper, the Agencies shall so notify the Redeveloper and the Purchase Price shall be reduced by the estimated costs of such infrastructure work incurred or to be incurred by the Redeveloper, but any such reduction shall not be reflected in the calculation of the Minimum Purchase Price for purposes of Section 3.03. The parties hereby acknowledge that the amount of the credit is based, in part, on the estimated costs and expenses to be incurred after the date of this Agreement and that the parties hereto hereby agree to act in good faith to agree on such estimate. The Redeveloper shall itemize such costs and shall provide the Agencies with copies of reasonably sufficient documentation as shall be requested by the Agencies to establish such cost estimates, promptly after receipt of the Agencies' election to have such Off-Site Infrastructure Costs borne by the Redeveloper, which costs are subject to the reasonable review and approval of the Agencies. In the event the parties hereto are unable to so agree on such Costs, they shall promptly appoint a mutually acceptable third party to make such determination prior to Closing. If, after making such election, the Agencies or the City

receive grant monies or acquire other funds that enable the Agencies or the City to construct or pay for all or part of the Off-Site Infrastructure that remains to be constructed, the parties will cooperate with each other in order to enable the Agencies or the City to apply such grants or other funds to the cost of such Off-Site Infrastructure. To the extent, if any, that the Agencies or the City are able to apply such grants or other funds to the construction of the Off-Site Infrastructure and such grants or other funds are paid to or for the account of the Redeveloper, the Redeveloper shall promptly thereafter refund to the Agencies an amount of the Purchase Price credit for Off-Site Infrastructure Costs granted to the Redeveloper that equals the amount of such Agency or City grants or other funds as is so paid to or for the benefit of the Redeveloper. To the extent there are any pending or projected assessments affecting the Property, the amount and fact thereof shall be taken into account by the Appraisers in arriving at the Final Appraised Value. To the extent any special assessment or assessments affecting the Property is or are intended to recover any Off-Site Infrastructure Costs for the Agencies or the City that are not reflected in the Final Appraised Value, the present value of any such special assessment or assessments as of the Closing shall be deducted from the Purchase Price.

3.06. Enhancements. If the Purchase Price is less than the Minimum Purchase Price set forth in Section 3.03(a) hereof, then in lieu of its right to terminate this Agreement as set forth in Section 3.04(a) hereof, the IDA shall have the right, in its sole and absolute discretion, to negotiate with the Redeveloper one or more "enhancements" to the Final Development Plan in order to increase the Final Appraised Value and thereby increase the Purchase Price to an amount not less than the Minimum Purchase Price. Enhancements, as referenced above, may include, without limitation, re-siting of the component parts of the Project, substitution of additional property, or providing alternate density to the

component parts of the Project, all with the goal to increase the value of the Final Development Plan and, therefore, increase the Purchase Price.

3.07. IDA Share in Excess Residential Sales Price. In the event the actual sales price of the Units Designated for Sale in the Residential Component (paid to the Redeveloper) exceeds the sales price of said units assumed in the Final Appraised Value by a minimum of thirty percent (30%), the IDA shall be entitled to a share of the actual sales price ("IDA Residential Price Share") equal to five percent (5%) of that portion, if any, of the aggregate sales price of such units that exceeds one hundred thirty percent (130%) of the projected sales price of such units assumed in the Final Appraised Value. The IDA Residential Price Share shall be calculated upon the closing of future sales and paid at three points in time: within thirty (30) days after (i) the closing of the sale of fifty percent (50%) of the Units Designated for Sale, one half of any IDA Residential Price Share due the IDA in respect of such sales shall be paid by the Redeveloper to the IDA; (ii) the closing of the sale of ninety (90%) percent of the Units Designated for Sale, seventy-five (75%) percent of any IDA Residential Price Share shall be paid to the IDA, less any amounts thereof paid pursuant to clause (i) of this section; and (iii) the closing of the sale of one hundred percent (100%) of the Units Designated for Sale, the full amount of any IDA Residential Price Share shall be paid to the IDA, less any amounts thereof paid pursuant to clauses (i) and (ii) of this section. The provisions of this Section shall survive the Closing or other termination of this Agreement.

Article 4. IDA FINANCIAL ASSISTANCE.

4.01. IDA Financial Assistance.

(a) The Redeveloper shall promptly apply for financial assistance and other benefits from the IDA in connection with the contemplated transaction. The parties expect, upon proper

application and satisfaction of other conditions customarily required by the IDA for the granting thereof, the IDA will confer IDA project status on the Project and the parties will negotiate in good faith the extent and amount of such financial assistance and other benefits to be granted to the Redeveloper in connection with the Project. The Redeveloper shall be responsible for all costs associated therewith and shall provide true and complete information in any application or other documentation submitted to the IDA.

(b) As previously disclosed to the Redeveloper, the County of Nassau (the "County") has submitted an application to the State of New York seeking "Empire Zone" designation that would have, if awarded, included the applicable portions of the City's waterfront, which designation was not granted; however, it is anticipated and understood by the parties hereto that the County may re-apply in the future if the State of New York offers additional Empire Zone designations. The parties hereto acknowledge that there are significant economic incentives and advantages that would affect the Property if this designation is awarded by the State of New York, including real estate tax exemptions, sales tax exemptions, income tax credits, and subsidized utility rates. Given these economic incentives, the parties agree that in the event that the Project is at some point designated as an "Empire Zone" after determination of the Final Appraised Value but before Closing, the parties hereto agree to renegotiate in good faith, the financial terms of this Agreement, to provide for an equitable allocation of any zone benefits between the parties, i.e., the Purchase Price shall be increased.

(c) The Redeveloper agrees that any post Closing transfer of title to the Property to any entity that is tax exempt shall be conditioned upon said entity's negotiation of a payment in lieu of taxes ("PILOT") agreement with the IDA and/or the applicable taxing jurisdictions (e.g., the City, Glen Cove School District and Nassau County), in a form and amount reasonably acceptable to such entity and

the IDA and/or said taxing jurisdictions. This requirement shall survive Closing and be a covenant running with the Property.

Article 5. REDEVELOPER'S PAYMENT OF FEES AND COSTS

5.01. Engineering Consultants. The Redeveloper agrees to promptly pay or reimburse the IDA at Closing for the reasonable costs incurred by the IDA in connection with the employment of one or more independent architectural and engineering consultants for the review of the construction plans, which will include Building Code Review, which amount shall not, under any circumstances, be refundable in whole or in part. The Redeveloper shall be responsible for payment of all reasonable fees imposed by the City Building Department Administrator pertaining to field inspections and the review and/or approval of site plans, drainage, landscaping, lighting, building and all other plans, determined to be necessary by the City Planning Board, the Zoning Board of Appeals and the City Building Department.

5.02. Other Professionals' Fees. Upon execution of this Agreement, the Redeveloper shall pay to Crowe, Deegan, Dickson & Benrubi, LLP, as Escrow Agent, under the Escrow Agreement attached hereto as Exhibit 5.02, the amount of \$150,000 (the "Fee Escrow") as an initial reimbursement to the IDA for the reasonable professional fees and expenses incurred, and to be incurred, by the IDA, including, without limitation, employment by the IDA of Special Disposition and Environmental Counsel and environmental consultants ("Professional Fees"), which amount, when released from escrow to the IDA, shall be refundable to the Redeveloper, in whole or in part, up to a maximum amount of \$150,000.00, upon the same terms as the Developer-Paid IDA Costs. Thereafter, Redeveloper shall be responsible for IDA's reasonable Professional Fees which shall be reimbursed by Redeveloper if, as and when Closing shall occur. The Fee Escrow shall be released to the IDA within sixty (60) days after the date of this Agreement on notice from the Redeveloper to the IDA and the Escrow Agent that (i) results of meetings

arranged by the IDA with the IDA, EPA, DEC, and New York State Department of Health confirm in the reasonable judgment of the Redeveloper that such agencies will work with the Agencies and Redeveloper to facilitate the development of the Property in accordance with the Development Concept and the Final Development Plan, and (ii) the Agencies have furnished the Redeveloper with evidence, reasonably satisfactory to the Redeveloper, that the mortgage referred to in Section 14.05 secures indebtedness not exceeding \$4,100,000. The Redeveloper shall notify the Agencies of the results of such meetings promptly after the conclusion thereof. If the Redeveloper does not notify the Escrow Agent within such sixty (60) day period that the results of such meetings are satisfactory to the Redeveloper, the Escrow Agent shall refund the Fee Escrow to the Redeveloper and the Redeveloper's failure to give such notice shall be deemed a termination of this Agreement pursuant to Section 14.02. If the Redeveloper notifies the Escrow Agent prior to the expiration of the sixty (60) day period that the Redeveloper is satisfied with the meetings with such Agencies, the Escrow Agent shall immediately release the Fee Escrow to the IDA.

5.03. Other Costs and Fees. The Redeveloper agrees to promptly pay or reimburse the IDA at Closing for any all other reasonable fees, costs and expenses in connection with the disposition of the Property. The fees set forth in this Article 5 shall be addition to the Consultant's fees set forth in Section 2.03 hereof.

Article 6. CONDITIONS TO CLOSING.

Each of the conditions set forth in this Article shall be a condition to the parties' obligation to close title hereunder (each, a "Closing Condition").

6.01. Approval of the Final Development Plan. The Final Development Plan shall have been approved by the Agencies and the Redeveloper as contemplated and required under Sections 2.04, 2.05, 2.06, 2.08 and 2.09.

6.02. Third Party Approvals. The Agencies and Redeveloper acknowledge that, because the Final Development Plan has not been agreed to at the date hereof, the extent and identity of each of the approvals required to redevelop the Property in conformity with the Final Development Plan (collectively with the approvals described in this subsection, the "Approvals"), is not presently known. The Agencies and the Redeveloper agree, however, that Redeveloper's obligation to close is dependent upon the Redeveloper's securing all required Approvals, whether or not now known or unknown. In addition to the Approvals required for redevelopment of the Property in conformity with the Final Development Plan set forth in this Article, the proposed Project and the Redevelopers' obligation to close under this Agreement are subject to all zoning, site plan, environmental, building permits and all other Federal, State, Local, governmental, board, agency or other body or public or private entity consents, waivers, variances, variations, modifications, easements, rights of way, exceptions, permits and approvals required in order to construct the Project in conformity with the Final Development Plan, including, without limitation, any of the foregoing required under covenants, easements, restrictions or other documents affecting or limiting the development of the Property. Notwithstanding the foregoing, approval of the marina referenced in the Development Concept shall not be deemed a required Approval. The IDA shall cooperate with the Redeveloper's efforts to secure the Approvals, such cooperation to include, without limitation, appearances before and intercession with any body or entity from which an Approval is required. The anticipated timeframes for obtaining the Approvals, and all other critical path items, related thereto and to the satisfaction of the other conditions in this Article shall be set forth in Schedule 6.02(a) to be agreed to between the IDA and the Redeveloper promptly after their approval of the Final Development Plan.

6.03. Article 17 Conditions to Closing. All of the actions, consents and Approvals as contemplated in Section 17.07 shall have been taken and given.

6.04. Zoning. The parties acknowledge that the current zoning affecting the Property does not contemplate a residential development, and may otherwise restrict or prohibit the construction of elements of the redevelopment to be contemplated by the Final Development Plan, so any redevelopment proposal and the parties' obligation to close under this Agreement are subject to potential amendments, modifications of, variances or variations from, or special use permits under, existing zoning regulations and classifications affecting the Property and an update of or revisions to the GEIS. Subject to the foregoing, all non-residential components of the Project are subject to the existing zoning regulations as to which the IDA does not have zoning powers. The IDA will, nonetheless, cooperate with the Redeveloper and the City and City's other agencies in an effort to determine and effectuate any amendments, modifications of, variances or variations from, or special use permits under, existing zoning regulations and classifications, the Urban Renewal Plan, the LWRP, Glen Cove Marine Waterfront-3 Design Guidelines and any other laws, rules, regulations and ordinances that are necessary in order to permit the redevelopment of the Property in accordance with the Final Development Plan. All of the foregoing are Closing Conditions.

6.05. Approval of the EPA. Notwithstanding the foregoing, pursuant to the terms of that certain Prospective Purchaser's Agreement between the IDA and the EPA, the Purchase Price may be subject to the prior approval of the EPA and/or the Department of Justice, which approval, if required, is a condition to Closing.

6.06. Off-Site Infrastructure. The IDA and/or the City shall have obtained title to all lands required to construct the Off-Site Infrastructure and all required access to the Property shall be

available to the Redeveloper in order to construct the Project. All funding shall be in place or committed to enable the IDA and/or the City to complete the Off-Site Infrastructure all as contemplated in the Final Development Plan. Alternatively, the IDA may elect to extend the credit contemplated by Section 3.05 and have the Redeveloper bear the Off-Site Infrastructure Costs.

6.07. IDA Financial Assistance. Subject to Section 4.01(a), the applied for and approved IDA assistance and benefits, shall be in place and available to the Redeveloper at Closing.

6.08. Golf Course Availability. The City of Glen Cove municipal golf course shall be available to hotel guests and residential unit occupants on a "most favored nations" basis to that afforded residents of the City and other hotel guests.

6.09. Additional Conditions: (a) The environmental remediation and other obligations of the Agencies required to be completed prior to Closing pursuant to the provisions of Article 17 shall have been completed and certified to as provided therein, (b) the Ferry License Agreement shall have been modified as provided in Section 2.13, (c) surrounding property, as to which the Redeveloper shall have requested condemnation, in conjunction with Consultant recommendations, within one (1) year after approval of the Final Development Plan, shall have been acquired and title thereto shall be available for transfer to the Redeveloper as provided in Section 2.15, (d) the Sewer Treatment Plant shall have been upgraded as provided in Section 2.19, (e) the Agencies and the Redeveloper shall have reached the understandings contemplated by Section 2.12, (f) all approvals and permits required of the City Planning Board shall have been obtained and issued to permit development of the Project in accordance with the Final Development Plan, and (g) the City Building Department shall have issued a building permit(s) and any other required Approvals for construction of the Project in accordance with the Final Development Plan.

6.10. Commercially Reasonable Best Efforts. Except as otherwise expressly provided in this Agreement, each of the Redeveloper, and the Agencies agrees to use their respective commercially reasonable best efforts to diligently seek and obtain all of the Approvals and to cause all of the other conditions to Closing to be fulfilled as set forth in this Article 6 in a timely manner and each agrees to actively pursue obtaining of the Approvals and fulfilling of the conditions until the Approvals are obtained and the conditions are fulfilled.

6.11. Termination. In the event any of the Approvals is not obtained or any of the other conditions or requirements set forth in this Article is not satisfied or fulfilled despite the use of all parties' commercially reasonable best efforts and after all administrative and, at the option of the Redeveloper, legal processes have been exhausted, either party shall have the option, but not the obligation, to terminate this Agreement by written notice to the other (the "**Article 6 Termination Notice**"), except for those provisions which are specifically set forth in this Agreement to survive the termination of this Agreement. In the event this Agreement is so terminated, the Redeveloper, the IDA and the CDA, respectively, shall have all of the rights and obligations provided in Article 14 with respect thereto. Notwithstanding the foregoing, to the extent an approval or fulfillment of a condition is not obtained due to the fault or neglect of a party, such party shall not have the option to terminate by reason of such failure to obtain an Approval or fulfill a condition.

Article 7 CONVEYANCE OF PROPERTY

7.01. Form of Deeds. The Agencies shall convey to the Redeveloper title to the Property by their respective bargain and sale deeds with covenants against grantor's acts (hereinafter called the "**Deeds**").

7.02. Permitted Encumbrances.

(a) The Redeveloper shall promptly order an examination of title from any reputable title company which is a member of the Board of New York Title Underwriters and shall cause a copy of the title report (the "**Title Report**") to be forwarded to the IDA's counsel. Not later than thirty (30) days after approval of the Final Development Plan, the Redeveloper shall notify the IDA as to those title exceptions contained in the Title Report which the Redeveloper is requesting be removed, or otherwise cleared, by the IDA prior to the Closing. The Redeveloper shall have thirty (30) days after any amendments or modifications to the Title Report which contain further title exceptions to so notify the IDA as to those further title exceptions which the Redeveloper is requesting be removed, or otherwise cleared, by the IDA prior to the Closing. Failure of the Redeveloper to timely deliver such notice(s) shall constitute the Redeveloper's agreement to acquire the Property subject to all of the matters and exceptions described in the Title Report, as so amended or modified, other than the exceptions specified in this Agreement and in Schedule 7.02 annexed hereto and made a part hereof. Such conveyance and title shall, in addition to the condition subsequent provided for in Section 14.07 hereof, and to all other conditions, covenants and restrictions specifically set forth or referred to elsewhere in this Agreement, be subject to (collectively, the "**Permitted Encumbrances**"):

(i) Any and all easements for utilities, both public and private, sewers, water lines, streets and rights of way, including, without limitation, those contained in the Urban Renewal Plan and an easement in favor of the IDA for the pedestrian walkway referred to in Section 2.05, which easement shall be located, in harmony with the Final Development Plan, substantially along the waterfront;

(ii) Such reservations, encumbrances or restrictions set forth in the Urban Renewal Plan;

(iii) Minor encroachments of structures on the Property over lot lines of record;

(iv) All provisions of any zoning and building codes and ordinances enacted by the City and any and all other provisions of federal, state and local municipal ordinances, regulations or public laws; and

(v) Any state of facts an accurate survey may show provided such state of facts does not render title unmarketable.

(b) The existence of liens or encumbrances shall not be objections to title provided that properly executed documents in recordable form necessary to satisfy the same are delivered to the Redeveloper and its title insurer at Closing, together with all applicable recording and/or filing fees, and such liens or encumbrances shall be paid out of the Purchase Price to be paid by the Redeveloper, provided the Redeveloper is notified at least three (3) business days prior to Closing of the amount and payee thereof and Redeveloper's title insurer agrees to omit such objections.

Notwithstanding the foregoing, a Permitted Encumbrance shall nonetheless be deemed an objection to title if, without modification, consent or variance that has not been obtained, it restricts or prevents construction of the Project in conformity with the Final Development Plan.

7.03. Survey. The Agencies, at their sole cost and expense and within forty-five (45) days after the date of this Agreement, shall furnish a survey or surveys and metes and bounds description of the Property to Redeveloper in form reasonably acceptable to Redeveloper's title company for incorporation into Redeveloper's title insurance policy. Redeveloper shall pay any cost of updating and guaranteeing such survey to the title insurer and Redeveloper's lenders.

7.04. Time and Place for Delivery of Deeds. The Agencies shall deliver the Deeds to the Redeveloper, and the Redeveloper shall close title as provided herein, within sixty (60) days after the latest of (i) the date of the Redeveloper's receipt of all of the Approvals and fulfillment of all of the

Closing Conditions and (ii) the IDA and the CDA shall possess and be able to convey to the Redeveloper the state of title to the Property required hereunder, free and clear of any claims, liens, restrictions or encumbrances which could prevent, restrict or delay construction of the Project in accordance with the Final Development Plan, or on such other date as the parties hereto may mutually agree to in writing; provided that the Redeveloper, without the consent or approval of the Agencies, may waive the Closing Conditions contained in Sections 6.06, 6.08, and 6.09(b), (c), (d) and (e). Conveyance shall be made at the principal office of the IDA or the attorneys for the IDA, and the Redeveloper shall accept such conveyance and pay the Purchase Price to the IDA at such time and place (the "Closing").

7.05. Apportionment of Current Taxes. The portion of the current taxes, if any, on the Property which are a lien on the date of delivery of the Deeds to the Redeveloper allocable to buildings and other improvements which have been demolished or removed from the Property by the IDA shall be borne by the IDA, and the portion of such current taxes allocable to the land shall be apportioned between the IDA and the Redeveloper as of the date of the delivery of the Deeds. If the amount of the current taxes on the Property is not ascertainable on such date, the apportionment between the IDA and the Redeveloper shall be on the basis of the amount of the most recently ascertainable taxes on the Property, but such apportionment shall be subject to final adjustment within thirty (30) days after the date the actual amount of such current taxes is ascertained. If the Property is exempt from taxation on the taxable status date next preceding the date of delivery of the Deeds, then the Redeveloper shall make a pro rata payment of taxes on the Property for the portion of the tax year measured from the date of delivery of the Deeds according to the custom for such prorations prevailing in Nassau County, New York at such time.

7.06. Recordation of Deeds. The Redeveloper shall promptly file the Deeds for recordation in the Office of the Clerk of Nassau County. The Redeveloper shall pay all costs for so recording the Deeds.

7.07. Title Evidence and Transfer Tax. The Redeveloper shall pay the cost of its own title insurance or title evidence, and shall further pay the cost of any transfer taxes that may be required, including, without limitation, the New York State transfer tax.

7.08. Condition of Property at Time of Conveyance. Other than as set forth in this Agreement, the Redeveloper shall take title to and possession of the Property "as is" in its present physical condition and the IDA shall have no obligation to perform any work to improve or prepare the Property for redevelopment in any way, except for (a) the remediation of the Property to the standards set forth in the documents and plans on record for commercial standards as required to the satisfaction of the EPA and DEC, and the EPA's record of decision, and in conformity with the requirements of Article 17, and (b) the completion of the Off-Site Infrastructure to the point required for commencement of Redeveloper's development activity at the Property and the IDA's demonstration to the reasonable satisfaction of the Redeveloper that contracts have been let by and funds are available to the IDA to complete the Off-Site Infrastructure or the granting to the Redeveloper of the Purchase Price credit for the cost thereof contemplated by Section 3.05 hereof.

7.09. Period of Duration of Covenant on Use. The covenant pertaining to the uses of the Property, set forth in Section 11.01 hereof, shall remain in effect from the date of the Deeds until February 24, 2011, as specified or referred to in the Urban Renewal Plan as such date may be modified or extended, by further amendment to the Urban Renewal Plan in a manner consistent with this Agreement and the Final Development Plan.

Article 8 **CONSTRUCTION PLANS**

8.01. **Plans for Construction of Improvements.**

(a) For purposes of this Agreement, "**Construction Documents**" shall mean all plans, drawings, specifications and related documents legally required for the issuance by the City Building Department of Building Permits for the construction of the Improvements, together with any and all changes therein that may thereafter be made and submitted to the IDA as provided herein, except as otherwise clearly indicated by the context. The Redeveloper shall submit applicable portions of the Construction Documents first to (i) the IDA for its approval as contemplated herein, and (ii) then, to the City Planning Board for Site Plan and any other related approvals, and (iii) then, to the City Building Department within six (6) months after the Redeveloper shall have received from the City Building Department a written acknowledgment evidencing that all conditions to the issuance of Building Permits, other than the submission and approval of the usual and customary construction plan portion of the Construction Documents, have been fully satisfied.

(b) The Construction Documents shall be sufficiently complete and detailed (i) to show that the Improvements and construction thereof will be in accordance with the provisions of this Agreement, (ii) for the issuance of Building Permits by the City Building Department, and (iii) to show that such Improvements and construction will be in conformity with all applicable State and local laws and regulations. The Construction Documents shall conform to the Final Development Plan, shall be in a form legally sufficient for the issuance of Building Permits, and shall be accompanied by the necessary fee required by such department for the Building Permit applications.

(c) If the Construction Documents submitted by Redeveloper conform to the provisions of this Agreement and all applicable State and local laws and regulations, the IDA shall promptly approve the Construction Documents in writing.

(d) If the City Building Department rejects the Construction Documents, in whole or in part, or if the IDA fails to approve the Construction Documents by reason of their failure to conform to the provisions of this Agreement, then the Redeveloper shall submit new or corrected Construction Documents that conform with this Agreement, and the City Building Department's lawful instructions, as soon as practical after the Redeveloper receives notice from the City Building Department rejecting the Construction Documents referred to in the latest such notice and specifying the basis for such rejection in reasonable detail. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Documents with respect to the original Construction Documents shall continue to apply until the Construction Documents have been approved by the Building Department; provided that the Redeveloper shall submit to the City Building Department Construction Documents that conform with the requirements of this Agreement as soon as practical after the date the Redeveloper receives written notice from the IDA or the City Building Department of the rejection of its original Construction Documents. All work with respect to the Improvements to be constructed or provided by the Redeveloper on the Property shall conform in all material respects with the Construction Documents as approved by the IDA and the City Building Department and with all applicable Federal, State or local laws and regulations. The term "**Improvements**", as used in this Agreement, shall be deemed to have reference to all improvements as provided and specified in the Final Development Plan and Construction Documents as so approved for work to be performed on the Property.

8.02. Changes in Construction Documents. If the Redeveloper desires to make any change in the Construction Documents after their approval by the IDA and/or the City Building Department, the Redeveloper shall submit the proposed change to the IDA and the City Building Department for their respective approvals. If the Construction Documents, as modified by the proposed change, conform to the requirements of Section 8.01 hereof with respect to such previously approved Construction Documents, the IDA shall approve the proposed change and notify the Redeveloper in writing of its approval.

8.03. Evidence of Equity Capital and Mortgage Financing. Prior to Closing the Redeveloper shall submit to the IDA an outline detailing the source or sources of financing contemplated for completion of the Project, which financing arrangements shall be subject to the IDA's reasonable approval.

8.04. Approvals of Construction Documents As Conditions Precedent to Conveyance. The submission of the Construction Documents and their approval by the IDA and the City Building Department (as provided in Section 8.01 hereof) is a condition precedent to the obligation of the IDA and the CDA to convey the Property to the Redeveloper.

8.05. Construction Suitability. The Agencies make no representation regarding the suitability of the Property for "standard construction" methods. The parties acknowledge that the Captain's Cove property will most likely necessitate the use of construction pilings due to the natural characteristics of the property which is filled-in marshland.

8.06. Redeveloper Not to Construct Over Utility Easements. The Redeveloper shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 7.02(a) hereof, unless such

construction is permitted by such easement or has been approved in writing by the IDA and the City. This paragraph shall survive the Closing.

**Article 9. CONSTRUCTION OF IMPROVEMENTS;
CERTIFICATE OF COMPLETION**

9.01. Time for Commencement and Completion of Improvements. The construction of the Improvements shall be commenced within six (6) months after the date of delivery of the Deeds and, except as otherwise provided in this Agreement, the Redeveloper presently anticipates that the Improvements will be completed within four (4) years of the date of delivery of the Deeds assuming progress toward completion is not delayed by factors or circumstances described in Section 18.02. Redeveloper will deliver to the IDA a construction schedule setting forth the Redeveloper's anticipated schedule and completion dates for construction of the Improvements within sixty (60) days after Closing, which shall establish the completion dates for purposes of Section 14.07. "**Completion**" shall mean the issuance of a Certificate of Completion as set forth in Section 9.05 hereof.

9.02. Sequencing of Construction. Any hotel, retail and entertainment facilities comprising portions of the Final Development Plan shall be constructed and completed in the first phase of the development, and any residential component (including any residential units associated with the hotel) shall not be constructed or completed before (but may be constructed or completed simultaneously with) any such hotel, retail and entertainment facilities.

9.03. Commencement and Completion of Construction of Improvements. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deeds shall contain (a) covenants on the part of the Redeveloper, for itself and for its successors and assigns, with respect to the operation, maintenance and transferability of the

Property; and (b) covenants on the part of the Redeveloper for itself and such successors and assigns, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Improvements thereon, and that such construction shall in any event be begun within the period specified in Section 9.01 hereof and be completed within the period specified therein. It is intended and agreed, and the Deeds shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of the community, the Agencies and enforceable by the Agencies against the Redeveloper and its successors and assigns to or of the Property of any part thereof or any interest therein. The Deeds shall also contain a right of re-entry as set forth in Section 14.07 hereof. The form of Deeds and covenants described herein shall be reasonably acceptable, in form and substance, to the IDA, CDA, Redeveloper and their respective counsel and copies thereof shall be provided to the Redeveloper for review and comment within thirty (30) days after the date hereof.

9.04. Progress Reports

(a) From and after the date of this Agreement until Completion, within thirty (30) days after the end of each calendar month, the Redeveloper shall furnish to the IDA a written statement setting forth a description of the construction progress for the previous month.

(b) Subsequent to conveyance of the Property, or any part thereof, to the Redeveloper, and until Completion, the Redeveloper shall make reports, in such detail and at such times as may be reasonably requested by the IDA, as to the actual progress of the Redeveloper with respect to such construction.

(c) The provisions of this section shall survive the Closing.

9.05. Certificate of Completion.

(a) Promptly after completion of construction of the Improvements (other than a maximum of forty (40%) percent of the Units Designated for Sale) in accordance with those provisions of this Agreement relating to the obligations of the Redeveloper to construct such Improvements, the IDA will furnish the Redeveloper with an appropriate instrument so certifying (the "Certificate of Completion"). Such certification by the IDA shall be (and it shall be so provided in the Deeds and in the certification itself) a conclusive determination of satisfaction and termination of this Agreement and covenants in this Agreement and in the Deeds with respect to the obligations of the Redeveloper, and its successors and assigns, to construct such Improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the improvements, or any part thereof.

(b) The certificate provided for in this Section 9.05 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property, including the Deeds. If the IDA shall refuse or fail to provide any certification in accordance with the provisions of this Section, the IDA shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the IDA, for the Redeveloper to take or perform in order to obtain such certification.

(c) The provisions of this Section shall survive the Closing.

Article 10. POST-CLOSING ACCESS TO PROPERTY

10.01. Right of Entry. The Agencies reserve for themselves, the City, and any public utility company, as may be appropriate, the unqualified right after Closing to enter upon the Property at all reasonable times for any reason, including, without limitation, for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Property boundary lines, whether or not provided for in the easements described or referred to in Section 7.02(a) hereof. The IDA, CDA and the City shall indemnify and hold the Redeveloper and any then-occupant, user, lessee or tenant of any of the Property, harmless from and against all claims, damages, liabilities, losses and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which result from negligent acts or omissions, willful misconduct or illegal acts of the IDA, CDA and the City or their respective representatives. Upon completion of any such activities upon the Property, the IDA, CDA and the City, at their sole cost and expense, shall restore the Property to substantially the same condition in which it existed prior to the commencement of such activities. This paragraph shall survive the closing of title or other termination of this Agreement.

Article 11. RESTRICTIONS UPON USE OF PROPERTY

11.01. Restrictions on Use. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deeds or other recorded document shall contain covenants on the part of the Redeveloper for itself, and such successors and assigns, in form and substance reasonably satisfactory to the parties, that the Redeveloper, and such successors and assigns, shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in the Urban Renewal Plan, Final Development Plan, and the approved Site Plan for the Project;

(b) comply with all Federal, State, City and local laws, in effect from time to time, prohibiting discrimination or segregation by reason or race, creed, color, national origin, age, gender, sexual orientation, marital status or disability in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof;

(c) in all advertising (including signs) for sale and/or rental of the whole or any part of the Property include the legend, "AN OPEN OCCUPANCY BUILDING" in type or lettering of easily legible size and design. The word "PROJECT" or "DEVELOPMENT" may be substituted for the word "BUILDING" where circumstances require such substitution;

(d) comply with the regulations issued by the Secretary of Housing and Urban Development set forth in 37 F.R. 22732-3 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards; and

(e) not effect or execute any agreement, lease, conveyance or other instrument whereby the Property of any part thereof is restricted upon the basis of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability in the sale, lease or occupancy thereof.

11.02. Covenants: Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and the Deeds or other recorded documents shall so expressly provide, that the agreements and covenants provided in Section 11.01 hereof and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agencies, their successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the owner of any other land (or of any interest in such land) in the

vicinity of the Property which is subject to the land use requirements and restrictions of the Urban Renewal Plan, and the United States (in the case of the covenant provided in Section 11.01(b) hereof), against the Redeveloper, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any covenant provided in Section 11.01(a)-(e) hereof shall remain in effect without limitations as to time. The terms "uses specified in the Urban Renewal Plan" and "land use" referring to provisions of the Urban Renewal Plan, or similar language, in this Agreement shall include the land and all building, housing, and other requirements or restrictions of the Urban Renewal Plan pertaining to such land.

11.03. Agencies and United States Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding Section, it is intended and agreed that the Agencies and their successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 11.01 hereof, and the United States shall be deemed a beneficiary of the covenant provided in Section 11.01(b) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the Deeds and other recorded documents shall so state) run in favor of the Agencies and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agencies or the United States has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Agencies shall have the right, in the event of any breach of any such agreement or covenant, and the United States shall have the right in the event of any breach of any such agreement or covenant, and the United States shall have the right in the event of any breach of the covenant provided in Section 11.01(b) hereof, to exercise all

the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Article 12. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

12.01. Representations As to Redevelopment. The Redeveloper represents and agrees that its purchase of the Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Property and not for speculation in land holding. The Redeveloper further recognizes that, in view of:

(a) the importance of the redevelopment of the Property to the general welfare of the community;

(b) the substantial financing and other public aids that have been and will be made available by law and by the Federal and local governments for the purpose of making such redevelopment possible; and

(c) the fact that a transfer of the membership interests in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such membership interests or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, is for practical purposes a transfer or disposition of the Property then owned by the Redeveloper, the qualifications and identity of the Redeveloper, and its members and managers, are of particular concern to the community and the Agencies. The Redeveloper further recognizes that it is because of such qualifications and identity that the Agencies are entering into this Agreement with the Redeveloper, and in so doing, is further willing to accept and rely on the obligations of the Redeveloper for the faithful performance of all undertakings and covenants hereby by

it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

12.02. Prohibition Against Transfer of Membership Interests; Binding Upon Members

Individually. For the reasons set forth in Section 12.01, the Redeveloper represents and agrees for itself, its members, managers and any successor in interest of itself and its members and managers, respectively, that prior to completion of the Improvements as certified by the IDA, neither the Redeveloper, nor any members or managers of the Redeveloper, shall be permitted to assign, transfer or convey, any portion of its right, title or interest in the Project or in the Redeveloper without the express written consent of the IDA, which consent may be granted or withheld in the sole and absolute discretion of the IDA; provided, however, as long as Donald Monti and Michael Posillico, directly or indirectly, maintain (a) managerial control of the Redeveloper, and (b) together with members of their respective families (their respective spouses, parents, children, uncles, aunts, nephews, and nieces), not less than fifty (50%) percent of the equity ownership interest in the Redeveloper in the aggregate, the approval of a prospective assignee shall not be unreasonably withheld by the IDA. No consent of the IDA shall be required for transfer by Messrs. Monti and Posillico of any of their ownership interests in the Redeveloper to members of their respective families, provided that Messrs. Monti and Posillico maintain managerial control of the Redeveloper. Approval by the IDA of the transfer of an interest in the Redeveloper held by Messrs. Monti or Posillico by reason of the death or physical or mental incapacity of either shall not be unreasonably withheld or delayed. After the completion of the Improvements as certified by the IDA, pursuant to Section 9.05, any member or manager of the Redeveloper shall be entitled to assign, transfer or convey, any portion of its right, title or interest in the Project or in the Redeveloper without the consent of, but on notice to, the IDA as contemplated in Section 12.03. The

Redeveloper agrees to comply with all IDA financial assistance documents to which it is a party and which contain customary restrictions on the Redeveloper's use and operation of the Project.

Notwithstanding the foregoing, in no event shall any portion of any right, title or interest in the Project or in the Redeveloper be conveyed to or owned by a "Prohibited Person" [defined below], either prior to or subsequent to completion of construction of the Improvements. "**Prohibited Person**" means (i) any person or entity (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agencies, the City or Nassau County, or (B) that directly or indirectly controls, is controlled by or is under common control with a person or entity that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the IDA, the City or the County, unless such default or breach has been waived in writing by the IDA, the City or the County, as the case may be, and (ii) any person or entity (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a person or entity that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

12.03. Requirements for Proposed Assignees. With respect to those circumstances where the consent of the IDA is not to be unreasonably withheld pursuant to Section 12.02, the Redeveloper represents and agrees for itself, and its successors and assigns, that the IDA shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any consent required under Section 12.02 that:

(a) any proposed transferee shall have the qualifications and financial responsibility, as determined by the IDA in the reasonable exercise of its discretion, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);

(b) any proposed transferee, by instrument in writing satisfactory to the IDA and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the IDA, have expressly assumed all of the obligations of the Redeveloper under this Agreement and all Permitted Encumbrances and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part): Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the IDA of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity) no transfer of, or change with respect to, ownership in the property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the IDA of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the IDA would have had, had there been no such transfer or change;

(c) there shall be submitted to the IDA for review all instruments and other legal documents involved in effecting the transfer; and if approved by the IDA, its approval shall be indicated to the Redeveloper in writing;

(d) the Redeveloper and its transferee shall comply with such other conditions as the IDA may find, in the reasonable exercise of its discretion, desirable in order to achieve and safeguard the purposes of the Urban Renewal Act and the Urban Renewal Plan; and

(e) the IDA shall respond promptly to, and in any event within forty-five (45) days after, Redeveloper's request for a consent or approval under this Section and delivery of all documentation requested by the IDA, including, without limitation, documentation required by the IDA to assess the qualifications and financial responsibility of the proposed assignee, pursuant to Section 12.03 (a) and 12.04. The IDA shall state in writing its reasons for any refusal to consent or approve any such transfer within such forty-five (45) day period. A request for consent or approval not so responded to within such forty-five (45) day period shall be deemed approved.

Provided, that, in the absence of specific written agreement by the IDA to the contrary, no such transfer or approval by the IDA thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

12.04. Information As to Members. In order to assist in the effectuation of the purposes of this Article 12 and the statutory objectives generally, the Redeveloper agrees that during the period between execution of this Agreement and completion of the Improvements as certified by the IDA, (a) the Redeveloper will promptly notify the IDA of any and all changes whatsoever in the ownership of membership interests, legal or beneficial, or of any other act or transaction involving or

resulting in any change in the ownership of such membership interests or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its officers, members or managers have been notified or otherwise have knowledge or information; and (b) the Redeveloper shall, at such time or times as the IDA may request, furnish the IDA with a complete statement, subscribed and sworn to by a managing member of the Redeveloper, setting forth all of the members of the Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such membership interests, their names and the extent of such interest, all as determined or indicated by the records of the Redeveloper and by specific inquiry made by any such officer, of all parties who on the basis of such records own 10 percent or more of the membership interests in the Redeveloper, and by such other knowledge or information as such managing member shall have. Such lists, data, information shall in any event be furnished to the IDA immediately prior to the delivery of the Deeds to the Redeveloper and as a condition precedent thereto, and annually thereafter on the anniversary of the date of the Deeds until the issuance of a Certificate of Completion. The provisions of this Section shall survive the Closing.

Article 13. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

13.01. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, as certified by the IDA, neither the Redeveloper, nor any successor-in-interest to the Property or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining (a) funds to the extent necessary for making the Improvements, including all hard and soft costs in connection with or related to the Project and (b) such additional funds, if any, in an amount not

to exceed the Purchase Price paid by the Redeveloper to the IDA. The Redeveloper (or such successor-in-interest) shall notify the IDA in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and, in any event, it shall promptly notify the IDA of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise. For the purposes of such mortgage financing as may be made pursuant to this Agreement, the Property may, at the option and sole expense of the Redeveloper (or successor-in-interest), be divided into several parts or parcels, provided that such subdivision, in the opinion of the IDA, is not inconsistent with the purposes of the Urban Renewal Plan and this Agreement and such subdivision is approved in writing by the IDA and all other appropriate municipal offices.

13.02. Copy of Notice of Default to Mortgagees. Whenever the IDA shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, the IDA shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement (provided that the identity of such mortgage holder has been disclosed in writing to the IDA) at the last address of such holder shown in the records of the IDA.

13.03. Mortgagee's Option To Cure Defaults. After any breach or default referred to in Section 13.02 hereof, each such holder shall (insofar as the rights of the IDA are concerned) have the right, at its option, to timely cure or remedy such breach or default (or such breach or default to the extent that it relates to the Property covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage: provided: that if the breach or default is with respect to construction of the Improvements, nothing contained in this Section or any other Section of this Agreement shall be

deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Improvements without first having expressly assumed the obligation to the IDA, by written agreement satisfactory to the IDA, to complete, in the manner provided in this Agreement, the Improvements on the Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Improvements relating to the Property or applicable part thereof shall be entitled, upon written request made to the IDA, to a certification or certifications by the IDA to such effect in the manner provided in Section 9.05 hereof, and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to the recapture of or reversion or reversioning of title to the Property that the IDA shall have or be entitled to because of failure of the Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts or parcels of the Property, or because of any other default in or breach of this Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Property to which such certification relates. The provisions of this Article 13 shall survive the Closing or other termination of this Agreement.

13.04. IDA's Option To Pay Mortgage Debt or Purchase Property. In any case, where, subsequent to default or breach by the Redeveloper (or successor-in-interest) under this Agreement, the holder of any mortgage on the property or part thereof does not complete construction of the Improvements within the period prescribed for such construction or completion in this Agreement, and such default shall not have been cured within sixty (60) days after written demand by the IDA so to do, then the IDA shall (and every mortgage instrument made prior to completion of the Improvements with respect to the Property by the Redeveloper or successor in interest shall so provide) have the option of

paying to the holder the amount of the mortgage debt, plus interest and other amounts secured by the mortgage, and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the IDA shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (a) the mortgage debt, plus interest and other amounts secured by the mortgage, at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); and (b) all customary and reasonable out-of-pocket expenses with respect to the foreclosure.

13.05. IDA's Option to Cure Mortgage Default. In the event of a default or breach prior to issuance of a Certificate of Completion, in or of any of Redeveloper's obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, then the IDA may, at its option, cure such default or breach, in which case the IDA shall be entitled, in addition to and without limitation upon any other rights or remedies to which shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Redeveloper or successor in interest of all costs and expenses incurred by the IDA in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement. The Redeveloper shall give the IDA prompt written notice of any such default of which the Redeveloper becomes aware.

13.06. Mortgage and Holder. For the purposes of this Agreement: the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan as to which the IDA has been given written notice, as provided for

herein. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust, including, but not limited to, the Federal Housing Commissioner, the Administrator of Veterans Affairs, and any successor in office of either such official.

13.07. Modification Requested By Mortgagee. If any lender or prospective lender to the Redeveloper, whose loan or loans is intended to be secured by a mortgage on all or a part of the Property (a "Mortgage") requests that the Agencies and the Redeveloper revise, modify or amend any of the provisions of this Agreement as a condition to the making, extension, renewal, expansion or modification of any such mortgage, the Agencies agree to revise, modify or amend this Agreement as so requested by the Mortgagee or the Redeveloper, provided that such revision, modification or amendment shall not (i) cause a material adverse change in the rights of the Agencies under this Agreement, (ii) increase any costs, fees or other monetary obligations of the Agencies, (iii) decrease in any material respect any obligation of the Redeveloper to the Agencies, (iv) modify or amend the Project Goals, Development Concept, or Final Development Plan, or (v) increase in any material respect any other obligations or restrict in any material respect any rights of the Agencies under this Agreement.

Article 14. TERMINATION AND REMEDIES

14.01. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed promptly to commence to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the

non-defaulting or non-breaching party may (a) institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, (b) exercise any right it may have to terminate this Agreement, or (c) commence proceedings to compel specific performance by the party in default or breach of its obligations.

14.02. Termination by Redeveloper Prior to Conveyance. In the event:

(i) the parties do not approve a Final Development Plan applying the applicable standards of Sections 2.04, 2.05, 2.06, 2.08 and 2.09 within six (6) months after the Consultants' recommendations thereon are furnished to the Redeveloper and the IDA, which date shall be subject to extension by agreement of the parties, or

(ii) any of the Closing Conditions described in Article 6 are not satisfied within the time provided therein, or

(iii) a default by the Agencies under Section 14.01 continues beyond the expiration of any applicable cure period, or

(iv) the IDA or the CDA does not tender conveyance of the Property, or possession thereof, in the manner and condition, and by the date provided in this Agreement, and any such failure to convey shall not be cured within thirty (30) days after the date of written demand by the Redeveloper (except if such failure is attributable solely to the fault of the Redeveloper), and, in each such case, if the Redeveloper does not pursue its rights under Section 14.01, and is not then in default of any of its material obligations hereunder, then this Agreement may, at the option of the Redeveloper, be terminated by written notice thereof to the IDA.

In the event of any termination of this Agreement under this Section or pursuant to Sections 3.04, 5.02 or 6.11, then:

(a) within ten (10) days after the date of any such notice of termination, the Agencies shall pay or cause the Escrow Agent to pay to the Redeveloper the Deposit and;

(b) the Agencies shall pay to the Redeveloper the Reimbursable Amount pursuant to Section 14.04. "**Reimbursable Amount**" means that portion of the aggregate amount of the third party out-of-pocket costs incurred by the Redeveloper on behalf of the Agencies or for which Redeveloper is entitled to reimbursement or credit in connection with the Project as of the date of any such notice of termination (including to third party affiliates of the Redeveloper to the extent such costs are not higher than those charged by unaffiliated vendors or suppliers for similar products or services) (collectively, the "**Redeveloper-Paid Agency Costs**") equal to the sum of (x) eighty (80%) percent of all non-environmental engineering and non-environmental consulting costs incurred by the Redeveloper, plus ninety (90%) percent of all environmental legal and other environmental costs incurred by the Redeveloper (all of which costs shall be accrued and totaled in the order in which they are incurred) until the aggregate amount of such accrued costs reaches \$700,000, plus (y) fifty (50%) percent of all environmental legal and other environmental costs incurred by the Redeveloper that are not accrued under clause (x), if any, without limit as to the amount thereof, plus (z) all of the Agencies' fees, costs or expenses incurred or paid by the Redeveloper to the Agencies or on their behalf at the written request of the IDA which expressly refers to this clause (z), including, without limitation, their professional fees paid pursuant to Section 5.02; and

(c) for a period ending on the later of (i) the Outside Reimbursement Date (defined in Section 14.04), or (ii) the date on which IDA pays to the Redeveloper the full amount of the Reimbursable Amount, the Redeveloper shall have a right of first refusal as set forth in Section 14.03; and

(d) the provisions of this Section shall survive the closing of title or other termination of this Agreement.

14.03. Right of First Refusal The terms of the Right of First Refusal shall be as follows:

(a) In the event the IDA proposes to enter into an agreement with or receives a written offer from a third party for the sale of the Property for the development of a project containing one or more components substantially similar to those described in the Final Development Plan (at least one of which shall be a hotel), the IDA shall notify the Redeveloper and shall provide the Redeveloper with a copy of the written offer or a term sheet or a letter of intent with such third party, which instrument shall set forth all terms of such offer (the "**Third Party Terms**"). The Redeveloper shall then have sixty (60) days, after receipt of the Third Party Terms, to notify the IDA whether or not it shall exercise the Right of First Refusal and thereby accept the Third Party Terms.

(b) In the event the Redeveloper timely notifies the IDA that it has elected to exercise the Right of First Refusal, the IDA and the Redeveloper shall, within sixty (60) days thereafter, act in good faith to enter into an agreement materially consistent with the Third Party Terms; provided, however, if the IDA and the Redeveloper are unable, despite their respective good faith efforts to enter into such agreement, or if the Redeveloper defaults under such agreement and the closing thereof does not occur within the time period set forth in the Third Party Terms, the Right of First Refusal shall be forfeited by the Redeveloper and shall thereafter become null and void.

(c) If the Redeveloper fails to notify the IDA of its election within sixty (60) days after the IDA gives the Redeveloper notice of the Third Party Terms, the Redeveloper shall be deemed to have declined to exercise its Right of First Refusal. In the event the Redeveloper notifies the IDA during

such sixty (60) day time period that it shall not elect to exercise the Right of First Refusal, or is deemed to have declined to exercise the Right of First Refusal in accordance with the immediately preceding sentence:

(i) the IDA shall be entitled to send to the Redeveloper a Waiver of Right of First Refusal, in a form reasonably acceptable to the IDA and the Redeveloper, to be executed by the Redeveloper, duly acknowledged and in recordable form; provided, that in the event the Redeveloper fails to execute such Waiver of Right of First Refusal within ten (10) days after the IDA's request therefor, the Redeveloper hereby appoints the IDA as its attorney-in-fact to execute such instrument on its behalf; and

(ii) the IDA shall thereafter be entitled to proceed with negotiations with such third party to enter into a land disposition agreement for the sale of the Property, which agreement shall be on such terms and conditions, in the aggregate, which are no less favorable to the IDA than the Third Party Terms. Not later than the closing thereof with such third party, the IDA and the CDA shall pay the Reimbursable Amount to the Redeveloper. Upon such reimbursement, all third-party reports, including, without limitation, reports and other work product of the Consultants, to the extent not previously furnished to the IDA shall be forthwith forwarded to the IDA; and

(d) The provisions of this Section shall survive the termination of this Agreement.

14.04. Outside Reimbursement Date. The IDA shall be entitled, in its sole and absolute discretion, to reimburse the Reimbursable Amount to the Redeveloper at any time, but in any event, the IDA and/or CDA shall reimburse the Redeveloper not later than the first day of the thirty-seventh (37th) calendar month after termination of this Agreement (the "**Outside Reimbursement Date**"). Any payment of the Reimbursable Amount by the IDA and/or CDA shall bear interest at the Prime Rate

announced as such from time to time by Citibank N.A., or its successor, as its reference rate for commercial loans to its best commercial borrowers, plus 1% per annum, which interest rate shall increase to the Prime Rate, plus 4% per annum, from and after the first day of the Outside Reimbursement Date. Upon such reimbursement, Redeveloper shall be deemed to have transferred all of its right, title and interest in all third-party reports, including, without limitation, reports and other work product of the Consultants, to the IDA.

14.05. Security for Reimbursable Amount. Because the IDA is not a tax collecting or significant revenue generating agency, the Redeveloper is willing to accept other security for payment of the Reimbursable Amount should it become payable to the Redeveloper. Accordingly, the Agencies shall, within ten (10) days after the execution and delivery of this Agreement, execute and deliver to the Redeveloper their respective mortgage and mortgage bond or note creating a second lien and mortgage on all of the Property in an amount of up to \$950,000, plus accrued interest at the rate stated in Section 14.04. To the extent the Reimbursable Amount increases above \$950,000, the parties will negotiate an increase in the principal amount of the mortgage to afford the Redeveloper security for the payment thereof should the Reimbursable Amount become payable to the Redeveloper. The Agencies and the Redeveloper shall cooperate to cause such mortgage to be recorded as a second lien against the Property. In order to induce the Redeveloper to accept the bond and mortgage as security for their collective obligation to repay the Reimbursable Amount, Agencies hereby represent, jointly and severally, to the Redeveloper that the second mortgage will be subordinate and junior in order of priority to other mortgages, liens and encumbrances in an aggregate monetary amount not greater than \$4,100,000 at the time the mortgage becomes a lien upon the Property. The Redeveloper shall deliver a satisfaction of such mortgage (the "**Mortgage Satisfaction**") to the Escrow Agent to be held in escrow for delivery to

the Agencies as provided in Section 14.06. In the event the second mortgage was theretofore recorded as aforesaid, upon the earlier to occur of (i) the Completion, (ii) termination of this Agreement under Sections 14.06 or 14.07, or (iii) the expiration of the Right of First Refusal, the Escrow Agent shall immediately record the Mortgage Satisfaction in the appropriate offices of record, and the Redeveloper shall cancel the Mortgage Note and immediately return the Mortgage Note to the IDA. All costs, including without limitation, mortgage recording tax, if any, to record the mortgage, shall be borne by the Agencies.

14.06. Termination by IDA Prior to Conveyance. In the event that:

(a) prior to conveyance of the Property to the Redeveloper and in violation of this Agreement:

(i) the Redeveloper (or any successor in interest) transfers or purports to transfer this Agreement or any rights therein; or

(ii) there is any change in the ownership or distribution of the membership interests of the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or the degree thereof; or

(b) the Redeveloper does not submit Construction Documents, as required by this Agreement, in satisfactory form and in the manner and by the dates respectively provided in this Agreement therefor; or

(c) the Redeveloper does not pay the Purchase Price and take title to the Property upon tender of conveyance by the Agencies pursuant to this Agreement, or if any default or failure referred to in subdivisions (a) and (b) of this Section 14.06 shall not be cured within thirty (30) days after

the date of written demand by the IDA, and provided in each such case, the Agencies are not then in default of any of their material obligations hereunder, or

(d) a default by the Redeveloper continues beyond the expiration of any applicable cure period,

then, in any of the events described in clauses (a), (b), (c) or (d) above, provided, that the Agencies do not pursue its other enforcement rights under Section 14.01, any rights of the Redeveloper, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the IDA, the CDA or the Property, shall, at the option of the IDA, be terminated by the IDA, in which event, (i) the Deposit shall be paid to the Agencies as liquidated damages and as their property, without any deduction, offset, or recoupment whatsoever, (ii) the Redeveloper shall have no right to the Reimbursable Amount, or to the Right of First Refusal, (iii) the Escrow Agent shall deliver the Mortgage Satisfaction and the Release of the Memorandum referred to in Section 18.03 (b) to the Agencies upon such termination, and neither the Redeveloper (or assignee or transferee) nor the Agencies shall have any further rights against or liability to the other under this Agreement, except for those provisions which are specifically set forth in this Agreement to survive the termination of this Agreement.

14.07. Revesting Title in IDA Upon Happening of Event Subsequent to Conveyance to Redeveloper. In the event that subsequent to conveyance of the Property or any part thereof to the Redeveloper and prior to IDA delivery of a Certificate of Completion,

(a) the Redeveloper (or successor interest) shall default in or violate its obligations with respect to the construction of the Improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within ninety

(90) days after written demand by the IDA so to do (or if the cure thereof is not reasonably capable of being completed within such period, then Redeveloper shall have such additional time as is reasonably required to cure the same) and Redeveloper shall not have commenced the cure thereof within such period and diligently pursued the cure to completion; or

(b) the Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on the Property (or any payments in lieu of taxes) or any part thereof when due, or shall place thereon an encumbrance or lien that is not permitted by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments (or such payments in lieu of taxes) shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the IDA made for such payment, removal, or discharge, within ninety (90) days after written demand by the IDA so to do; or

(c) there is, in violation of this Agreement, any transfer of the Property or any part thereof, or any transfer or purported transfer of this Agreement, or any change in the ownership or distribution of the membership interests of the Redeveloper, or with respect to the identity of the parties in control of the Redeveloper in excess of the permissible degree thereof as set forth in Article 12, and such violation shall not be cured within thirty (30) days after written demand by the IDA to the Redeveloper;

then in any one or more of the events set forth in clauses (a), (b) and (c) above, and provided the Agencies are not then in default of their material obligations hereunder, and provided further that the Agencies do not pursue their enforcement rights, if any, under Section 14.01, the Agencies shall have the right to re-enter and take possession of the Property and to terminate (and re-vest in the Agencies)

the estate conveyed by the Deeds to the Redeveloper, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property to the Redeveloper shall be made upon, and that the Deeds shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in clauses (a), (b), and (c) of this Section 14.07, failure on the part of the Redeveloper to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the IDA, at its option, may declare a termination in favor of the IDA of the title, and of all the rights and interests in and to the Property conveyed by the Deeds to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in the Property, shall revert to the IDA, provided, that such condition subsequent and revesting of title as a result thereof in the IDA shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by this Agreement, (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages and (iii) the rights and obligations of the parties under Section 14.08. In addition to and without in any way limiting the IDA's right to reentry as provided for in the preceding sentence, the IDA shall have the right to retain the Deposit and accrued interest without any deduction, offset or recoupment whatsoever, the Escrow Agent shall deliver the Mortgage Satisfaction and the Release of the Memorandum in the event of a default, violation or failure of the Redeveloper as specified in the preceding sentence, and shall have no obligation for payment of the Reimbursable Amount or to grant to the Redeveloper the Right of First Refusal. The provisions of this Section shall survive the Closing.

14.08. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the Agencies of title to the Property or any part thereof as provided in Section 14.07, the Agencies shall,

pursuant to their responsibilities under State law, use commercially reasonable best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as set forth in Article 13) as soon and in such manner as the Agencies shall find feasible and consistent, in its sole discretion, with the objectives of such law or the Urban Renewal Plan to a qualified and responsible party or parties (as determined by the Agencies) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Agencies and in accordance with the uses specified for such Property or part thereof in the Urban Renewal Plan. Upon such resale of the Property, the proceeds thereof shall be applied:

(a) First, to reimburse the IDA, on its own behalf or on behalf of the City, for all costs and expenses incurred by the IDA, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof (but less any net income derived by the IDA from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the IDA, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversion of title thereto in the IDA or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part

thereof; and any amounts otherwise owing the IDA by the Redeveloper and its successor or transferee;
and

(b) Second, to reimburse the Redeveloper, its successor or transferee, up to an amount equal to the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the amounts actually invested or expended by it in planning for, acquiring and carrying the Property and in making any of the Improvements on the Property or part thereof; and

(c) Any balance remaining after such reimbursements shall be retained by the IDA as its property.

(d) The provisions of this Section shall survive the closing of title or other termination of this Agreement.

14.09. Other Rights and Remedies of the Parties; No Waiver by Delay. Each party shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article 14, including also the right to execute and record or file among the public land records in the office in which this Agreement or the Deeds or both are recorded a written declaration of the termination of all the right, title, and interest of the Redeveloper, and its successors in interests and assigns, in the Property, and the revesting of title thereto in the Agencies, provided that any delay by any party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article 14 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that no party should be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by any party

with respect to any specific default by another party under this Article be considered or treated as a waiver of the rights of the non-defaulting party with respect to any other defaults by another party under this Article or with respect to the particular default except to the extent specifically waived in writing.

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

14.11. Party in Position of Surety With Respect to Obligations. Each party, for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or other wise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

Article 15. EQUAL EMPLOYMENT OPPORTUNITY.

15.01. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agree that during the construction of the Improvements provided for in this Agreement:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, age, gender, sexual orientation, marital status or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the IDA setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, age, gender, sexual orientation, marital status or disability.

(c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has collective bargaining agreement or other contract or understand, a notice, to be provided, advising the labor union of workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's books, records, and accounts by the IDA, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Redeveloper's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Redeveloper will include the provisions of paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provision in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 10.04 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon

each such contractor, subcontractor, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontractor purchase order as the IDA or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided however, that in the event the Redeveloper becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the IDA or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interest of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:", and the term "Redeveloper" shall be changed to "Contractor."

15.02. State Equal Opportunity in Construction Employment. During the performance of this Agreement, the Redeveloper agrees as follows:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

(b) The Redeveloper will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Division of Human Rights, advising such labor union or representative of the Redeveloper's agreement under clauses (a) through (g) of Section 15.02 (hereinafter called "non-discrimination clauses"). The Redeveloper shall request such labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability, and that such labor union or representative either will affirmatively cooperate within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discriminatory clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request, that it furnish such a statement, the Redeveloper shall promptly notify the State Division of Human Rights of such failure or refusal.

(c) The Redeveloper will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substances of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Division of Human Rights shall determine.

(d) The Redeveloper will state in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, age, gender, sexual orientation, marital status or disability.

(e) The Redeveloper will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General, City, IDA, Commissioner of Housing and Community Renewal and the Industrial commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the IDA upon the basis of a finding made by the State Division of Human Rights that the Redeveloper has not complied with these non-discrimination clauses, and the Redeveloper may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State Housing Authority, or an urban renewal agency, or contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Division of Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Division, notice thereof has been given to the Redeveloper and an opportunity has been afforded the Redeveloper to be heard publicly in accordance with the procedures of the Division. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) If this Agreement is canceled or terminated under clause (f), in addition to other rights of the agency provided in this Agreement upon its breach by the Redeveloper, the Redeveloper will

hold the IDA harmless against any additional expenses or costs incurred by the IDA in completing the work or in purchasing the services, materials, equipment or supplies contemplated by this Agreement, and the IDA may withhold payments from the Redeveloper in an amount sufficient for this purpose and recourse may be had against the surety on the performance bond if necessary.

(h) The Redeveloper will include the provisions of clauses (a) through (g) of Section 15.02 in every subcontract or purchase order altered only to reflect the proper identity of the parties in such a manner that such provisions will be binding upon each sub-contractor or vendor as to operations to be performed within the State of New York. The Redeveloper will take such action in enforcing such provisions of such sub-contract or purchase order as the IDA may direct, including sanctions or remedies for non-compliance. If the Redeveloper becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the IDA, the Redeveloper shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

Article 16. SEC. 108 LOAN GUARANTEE PROGRAM REQUIREMENTS

16.01. Administrative Requirements – Financial Management

(a) Accounting Standards. The Redeveloper agrees to comply with 24 CFR Part 85 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred and agrees to comply with the compliance requirements applicable to the federal program including the audit requirements of OMB Circular A-133.

(b) Cost Principles. The Redeveloper shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit organizations," or A-21, "Cost Principles for Educational Institutions," as applicable; and if the Redeveloper is a governmental or quasi-governmental

agency, the applicable sections of 24 CFR Part 85, for all costs incurred whether charged on a direct or indirect basis.

16.02. Administrative Requirements - Documentation and Record Keeping

(a) Records to be Maintained. The Redeveloper shall maintain all records required by the federal regulations specified in 24 CFR Part 570, and that are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:

- (i) Records providing a full description of each activity undertaken;
- (ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
- (iii) Records required to determine the eligibility of activities;
- (iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with the CDBG Program assistance;
- (v) Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
- (vi) Financial records as required by 24 CFR Parts 570.502 and 85; and
- (vii) Other records necessary to document compliance with 24 CFR 570.

(b) Documents to be Retained. The Redeveloper shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the IDA certifies the completion of improvements as provide in this Agreement.

(c) Employee Data. The Redeveloper shall maintain employee data demonstrating employee eligibility for employment, if applicable. Such data shall include, but not be limited to, employee name, address, income level or other basis for determining eligibility, and description of

service provided. Such information shall be made available to the Agencies, in a format reasonably acceptable to the parties.

(d) Property Records. The Redeveloper shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria.

(e) Close-Outs. The Redeveloper's obligation to the IDA shall not end until all close-out requirements are completed. Activities during such period shall include, but are not limited to, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the IDA), and determining the custodianship of records.

(f) National Objectives. The Redeveloper agrees to maintain documentation that demonstrates that the construction and activities to be performed on the Property under this Agreement meet one or more of the CDBG Program's national objectives: 1) benefit low-to-moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meet community development needs having a particular urgency; all as defined in 24 CFR Part 570.208.

(g) Audits and Inspections. All Redeveloper records with respect to any matters covered by this Agreement shall be made available to the IDA, their designees or the Federal Government, at any time during normal business hours, as often as the IDA deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Redeveloper within 30 days after notice to the Redeveloper. Failure of the Redeveloper to comply with the above audit requirements will constitute a violation of this Agreement

and may result in the withholding of future advances. The Redeveloper hereby agrees to have an annual agency audit conducted in accordance with current local policy concerning Redeveloper audits.

16.03. Personnel and Participant Conditions –Civil Rights

(a) Compliance. The Redeveloper agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

(b) Nondiscrimination. The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, sexual orientation or status with regard to public assistance. The Redeveloper will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(c) Section 504. The Redeveloper agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The IDA shall

provide the Redeveloper with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

16.04. Personnel and Participant Conditions – Affirmative Action

(a) Approved Plan. The Redeveloper agrees that it shall be committed to carry out pursuant to the IDA's specifications an Affirmative Action Program in keeping with the principles as provided in Presidents Executive Order 11246 of September 24, 1965. The IDA shall provide Affirmative Action guidelines to the Redeveloper to assist in the formulation of such program.

(b) Women/Minority Business Enterprise. The Redeveloper will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51%) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Redeveloper may rely on written representations by vendors regarding their status as minority and female business enterprises in lieu of an independent investigation.

(c) Access to Records. The Redeveloper shall furnish and cause each of its vendors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the IDA, HUD or its agents, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(d) Notifications. The Redeveloper will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a

notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the Redeveloper's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) EEO/AA Statement. The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that it is an Equal Opportunity or Affirmative Action employer.

(f) Subcontract Provisions. The Redeveloper will include the provisions of Sections 16.03 and Section 16.04 in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each vendor.

16.05. Personnel and Participant Conditions –Employment Restrictions

(a) Prohibited Activity. The Redeveloper is prohibited from using personnel employed in the administration of the program for political activities; sectarian, or religious activities; lobbying, political patronage and nepotism activities.

(b) OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

(c) Labor Standards. The Redeveloper agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, (the "Prevailing Wages") the provisions of Contract Work Hours, the Safety Standard Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The Redeveloper shall

maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the IDA for review upon request. The Redeveloper agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) households, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the IDA pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFP, Parts 3, 1, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Redeveloper of its obligation, if any, to require payment of the higher wage. The Redeveloper shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph for such contracts in excess of \$10,000.00.

(d) "Section 3" Clause

(i) The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the Section 3 covered project.

(ii) The Redeveloper will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The Redeveloper certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

(iii) The Redeveloper agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(iv) The Redeveloper will include this Section 3 clause in every subcontract for work in connection with the project and will take appropriate action pursuant to the subcontract upon a finding that the vendor is in violation of regulations issued by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and the IDA. The Redeveloper will not subcontract with any vendor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the vendor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(v) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued thereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement, binding upon the IDA, the Redeveloper and vendors, their successors and assigns to those sanctions

specified by the Agreement through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(vi) The Redeveloper further agrees that the Redeveloper will insure that at least fifty one percent (51%) of the aggregate number of all jobs created at the Project must either be taken by or made available to low-to-moderate income persons within three (3) years following completion of the construction pursuant to 24 CFR Section 570.208.

16.06. Personnel and Participant Conditions –Conduct

(a) Assignability. The Redeveloper shall not assign or transfer any interest in this Agreement without the prior written consent of the IDA thereto, except as otherwise provided herein.

(b) Hatch Act. The Redeveloper agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

(c) Conflict of Interest. The Redeveloper certifies that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Redeveloper further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Redeveloper hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official of the IDA, or of any designated public agencies or of Redeveloper or of any vendors or vendor which are receiving funds under the CDBG Program.

(d) Subcontracts.

(i) Monitoring. The Redeveloper will monitor all subcontracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(ii) Content. The Redeveloper shall cause all of the provisions of this Agreement relating to the Section 108 Loan requirements to be included in and made a part of any subcontract executed in the performance of this Agreement.

(iii) Selection Process. The Redeveloper shall undertake to insure that all subcontracts made in the performance of this Agreement, except to affiliates of the Redeveloper, shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the IDA along with documentation concerning the selection process.

(e) Religious Organization. The Redeveloper agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization, in accordance with applicable federal regulations.

16.07. Environmental Conditions

(a) Air and Water. Except to the extent provided to the contrary elsewhere in this Agreement, including, without limitation, in Article 17, the Redeveloper agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

Clean Air Act, 42 U.S.C., 1857, et seq.

Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, and all regulations and guidelines issued thereunder.

Environmental Protection IDA (EPA) regulations pursuant to 40

C.F.R., Part 50, as amended.

National Environmental Policy Act of 1969.

HUD Environmental Review Procedures (24 CFR Part 58).

(b) Flood Disaster Protection. The Redeveloper agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

(c) Lead-Based Paint. The Redeveloper agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR Part 35, and in particular subpart B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

(d) Historic Preservation. The Redeveloper agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

Article 17. ENVIRONMENTAL MATTERS

17.01. General. Notwithstanding anything to the contrary contained herein or in any other agreements between the parties, the provisions set forth under this Article contain the parties' entire agreement as to environmental matters relating to the Property, with the exception of subparagraph 2.17 regarding Environmental Impact Assessments, which is unaffected by this Article. As used herein, the term "Environmental Agencies" shall include the EPA, DEC, the New York State Department of Health ("DOH"), and any other governmental agencies, departments or entities that have jurisdiction over the Property or the conditions existing thereon.

17.02. Condition of the Property and True Commercial Use.

(a) The parties recognize that significant areas of the Property are contaminated and are subject to federal and state cleanup plans that call for, among other things, the removal of contaminated soil and materials in certain areas to certain depths. The parties further recognize that despite the federal and state cleanup plans' stated goal of remediating the Property to a level and extent that will allow future "commercial use" of the Property, additional soil remediation, beyond that required by the federal and state cleanup plans, may be required in order for Redeveloper to develop the Property for "true commercial use" in accordance with the Final Development Plan. As used herein, the term "true commercial use" means uses that will require soil excavation at depths necessary to construct the type of commercial facilities, and to install commercial facility-related infrastructure including but not limited to foundations, basements, drainage structures and the infrastructure improvements all as initially contemplated by the Development Concept and thereafter as set forth in the Final Development Plan.

(b) The Agencies shall cause the Property to be delivered to Redeveloper in a condition that allows "true commercial use" development as defined herein and in accordance with the Final Development Plan. Any and all costs required to render the Property in a condition that allows true

commercial use, including costs required to remediate the Property beyond that required by the current federal and state cleanup plans, shall be borne solely by the Redeveloper, subject to a dollar-for-dollar reduction in the Final Appraised Value. The mechanism for determining the amount of the reduction shall be that described in Section 17.03.

17.03. Future Residential Development of The Property.

(a) The Agencies recognize that the Development Concept also contemplates the residential development of certain, to be determined, areas of the Property, and that the federal and state cleanup plans for the Property may not require the level and extent of remediation required for residential development in areas of the Property. The parties agree that, to the extent additional remediation is required beyond that necessary to allow "true commercial use" as set forth above in Section 17.02, to develop certain areas of the Property for residential use in accordance with the Final Development Plan, the costs required to perform such additional remediation shall be borne solely by Redeveloper subject to a dollar-for-dollar reduction in the Final Appraised Value.

(b) The parties acknowledge that the amount of the credit will be based on Redeveloper's good faith estimate of the costs to perform the additional remediation, including, but not limited to, investigation, environmental engineering and environmental legal costs. The parties agree to act in good faith to agree on the estimate and, for purposes of reaching an agreement on the amount of the estimated cost, the Agencies reserve the right, at their sole cost and expense, to solicit bids from reputable environmental engineering and environmental legal firms for the same work. For purposes of this Section "same work" means the additional remediation activities required to allow the Property to be used for true commercial and residential purposes, performed in the sequence and in accordance with a remediation schedule to be prepared by the Redeveloper. The Redeveloper may, in its sole discretion,

accept any estimate obtained by the Agencies and agree to base the amount of the reduction on such estimate. In the event the Redeveloper does not so elect and if the parties are unable to agree on the amount of the credit, they shall appoint a mutually acceptable third party promptly to determine the amount of the credit.

(c) Once the amount of the credit has been determined and applied as a credit against the Final Appraised Value, as provided herein, the Redeveloper shall be responsible for performing the remediation work required to render the property suitable for true commercial and true residential use as initially contemplated by the Development Concept and thereafter as specified in the Final Development Plan.

17.04. Determination Regarding the Need for Additional Remediation.

(a) The parties recognize that the determination regarding the level and extent of additional remediation required to permit true commercial and residential development of the Property rests solely with the Environmental Agencies, and must be satisfactory to Redeveloper's lender and environmental insurer. As that determination is likely to depend on the type, number and location of true commercial and residential facilities planned at the Property, the parties agree to consider the optimal locations of future true commercial and residential facilities during the process of agreeing upon the Final Development Plan, and to work together to structure the Final Development Plan, as necessary, to optimize the Purchase Price and obtain the Approvals required to develop the Property for true commercial and residential uses.

(b) As soon as practical after the collection of all data necessary to fully identify conditions of concern at the Property, as set forth below in Section 17.05, Redeveloper and the Agencies agree to approach commercially acceptable lenders and environmental insurers regarding their

willingness to loan against and insure the Property as it is to be developed pursuant to the Final Development Plan, and regarding what, if any, additional data or site information is required in order for them to make that determination. The ultimate decision regarding the selection of the lenders and environmental insurers rests solely with Redeveloper provided that, with regard to the environmental insurers, the environmental insurers are licensed to do business in the State of New York and have an A.M. Best rating of A or better.

17.05. Data Assembly, Evaluation and Collection.

(a) The parties recognize that the Property has been the subject of prior subsurface investigations and that there is a need to assemble and evaluate the existing data to determine whether additional data and/or remediation is required to develop the Property as contemplated herein.

(b) On or before 15 days after execution of this Agreement the Agencies shall provide to Redeveloper copies of any and all prior subsurface investigation reports pertaining to the Property, and advise Redeveloper whether the Agencies elect, at their sole cost and expense, to plot the existing data contained in the reports on one or more site plans for the purpose of determining whether data gaps exist. In the event the Agencies elect to plot the existing data, the Agencies shall provide Redeveloper with the site plan(s) containing the plotted data within forty-five (45) days of the execution of this Agreement.

(c) In the event the Agencies elect not to plot the existing data as provided above in Section 17.05(b), Redeveloper shall, within 30 days of being so notified at its sole cost and expense, plot the data. Costs and expenses incurred by Redeveloper to plot the existing data are Redeveloper-Paid Agency Costs.

(d) Within 30 days of the date that the existing data is plotted in accordance with Section 17.05 (b) or (c), the parties shall meet to review the plotted data and discuss the need for additional data collection. In the event additional data collection is required to determine whether the Property can be developed for true commercial and residential uses and/or to determine the optimal location of those uses, including data that may be required by the Environmental Agencies or Redeveloper's lenders and environmental insurers, the costs and expenses associated with the collection and analysis of that data shall be borne solely by the Redeveloper as Redeveloper-Paid Agency Costs.

17.06. The EPA Prospective Purchaser Agreement ("PPA").

(a) In order to facilitate the sale of the Property and to insulate itself from potential liability associated with the portion of the Property known as the "Li Tungsten" site, the IDA entered into a PPA with the EPA (a fully executed copy is attached hereto as Exhibit 17.06(a)) wherein the EPA committed not to sue the IDA and to afford the IDA protection from contribution actions under 42 U.S.C. § 113(f), provided the IDA pay EPA a certain percentage of the purchase price from the sale of the Property and comply with certain due care, notification and site access requirements set forth in the PPA. Upon EPA's consent, the benefits of the PPA are assignable to the IDA's transferee provided the IDA satisfies its payment obligation and the transferee adheres to the requirements of the PPA.

(b) The IDA agrees to cooperate and work with Redeveloper to seek to have EPA, as a Closing Condition, modify the PPA or issue written assurances, to provide that:

(i) adherence to the due care, cooperation and institutional control requirements set forth in paragraphs 16 through 19 and 21 of the PPA will satisfy the due care, cooperation and institutional control requirements set forth in 42 U.S.C. § 9601(40);

(ii) the IDA's satisfaction of the PPA's payment obligations eliminates the need for a wind fall lien, as described under 42 U.S.C. § 9607(r)(2), and no such lien will be imposed in connection with the Property;

(iii) in determining the need for future response activities at the Property, including but not limited to installing monitoring wells and obtaining easements, EPA will work with the Redeveloper in an effort perform any future response activities in locations and in a manner that will, to the maximum extent possible, limit interference with Redeveloper's development and use of the Property as initially contemplated by the Development Concept and thereafter as set forth in the Final Development Plan; and

(iv) other modifications as may be necessary to ensure that the Property can be developed as initially contemplated by the Development Concept and thereafter as set forth in the Final Development Plan in a manner that does not increase Redeveloper costs to do so.

17.07. Environmental Conditions to Closing.

(a) In addition to the conditions set forth in Article 6 of this Agreement, Redeveloper shall not be required to purchase the Property and shall have the right to terminate this Agreement, unless, as of and effective at Closing, the Agencies are in a position to deliver the Property in a state and condition that satisfies and have otherwise satisfied all of the following conditions for the benefit of the Redeveloper and its successors and assigns:

(1) All Environmental Agencies having authority regarding the requirements of this paragraph shall have confirmed in writing that, except for long term groundwater monitoring required by the EPA's Record of Decision, the remediation of the Li Tungsten site is complete, and that no liens (including no "windfall lien"), either now or in the future, will be imposed

pursuant to 42 U.S.C. §§ 107(l) or 107 (r)(2) on the Property in connection with unrecovered or future response costs, natural resource damages or any increase in market value resulting from the cleanup performed pursuant to the EPA's Record of Decision;

(2) EPA has (i) consented in writing that the Redeveloper is acceptable as the transferee under the PPA; (ii) confirmed in writing, as of the date of Closing, that the IDA has not violated and is in full compliance with the provisions of the PPA; (iii) acknowledged in writing that the Redeveloper is a limited liability company ("LLC") and confirmed in writing that the provisions of the PPA do not impose any liability whatsoever on any managers or member(s) of the LLC or individuals comprising such managers or member(s), provided that the managers or member(s), or individuals comprising such managers or member(s), are or were acting within their capacity as managers or member(s) of the LLC; and (iv) confirmed in writing that the record keeping obligation of the Respondent as set forth in the PPA applies solely to records maintained in connection with environmental investigation and remediation.

(3) All Environmental Agencies having authority regarding the requirements of this paragraph shall have confirmed in writing that the remediation of the Captain's Cove site, as required by the DEC's Record of Decision is complete, that there are, and will be, no Environmental Agency oversight costs, either now or in the future, due in connection with the Captain's Cove site, or in the event that such costs have been or will be incurred, the Environmental Agencies will not impose a lien on the Property in connection therewith or seek recovery of those costs from the Redeveloper;

(4) the Environmental Agencies have confirmed in writing that the Redeveloper can develop the Property for the uses as initially contemplated by the Development Concept

and thereafter as set forth in the Final Development Plan, including true commercial and residential uses, and have withdrawn, removed or allowed the withdrawal or removal of any deed restrictions or covenants prohibiting such uses;

(5) an environmental insurance company(s) selected by the Redeveloper and acceptable to the IDA has agreed to issue an environmental insurance policy, on terms acceptable to Redeveloper, covering clean-up costs for pollution conditions, losses for third-party personal injury and property damage claims, and cost-cap insurance in an amount sufficient to cover any and all claims and damages associated with the Property, including but not limited to, a cap of not less than three-times the estimated cost to remediate the Property to allow residential use;

(6) a lender(s) selected by Redeveloper has agreed to accept the Property as collateral for a loan, on terms acceptable to Redeveloper, notwithstanding its environmental history;

(7) IDA has fully satisfied all its payment obligations set forth in the PPA;
and,

(8) the Agencies have provided Redeveloper with a written release from the Agencies and the City, releasing Redeveloper from and against any and all liability arising from or relating to any and all environmental conditions existing at the Property on or before the date of the Closing, including but not limited to investigation and remediation costs. This Release shall not apply to liability arising from the Redeveloper's negligence or intentional misconduct after Closing.

(b) Redeveloper's costs to obtain the environmental insurance policy described in clause (a) (5) of Section 17.07 shall be Redeveloper-Paid Agency Costs and shall be a dollar for dollar credit against the Purchase Price for the benefit of the Redeveloper. To the extent obtainable, the Agencies and the City shall be named as additional insureds on the environmental insurance policy.

All costs (i) incurred by Redeveloper to name the Agencies and the City as additional insureds and (ii) to obtain cost-cap insurance with a cap of three-times the estimated remediation costs described in Section 17.07(a)(5), to the extent in excess of the cost of such insurance with a cap of two-times such estimated remediation cost, shall be a dollar for dollar credit to the Redeveloper against the Purchase Price for the benefit of the Redeveloper but shall be ignored for the purpose of determining whether the Purchase Price is less than the Minimum Purchase Price.

17.08. Environmental Remediation and Environmental Insurance Costs. The parties hereby acknowledge that the amount of the reduction in the Final Appraised Value granted to the Redeveloper for all costs of environmental investigation, remediation and environmental insurance costs pursuant to the provisions of this Article 17 and Section 14.02 are costs and expenses to be incurred, in part, after the date of this Agreement, and to the extent that such costs and expenses are estimates, the parties hereto hereby agree to act in good faith to agree on such estimates. The Redeveloper shall itemize such costs and shall provide the IDA with copies of reasonably sufficient documentation as shall be requested by the IDA to establish such costs estimates, which costs are subject to the reasonable review and approval of the IDA. In the event the parties hereto are unable to so agree, they shall promptly appoint a mutually acceptable third party to make such determination prior to Closing. This paragraph shall survive the closing of title or other termination of this Agreement.

Article 18. ADDITIONAL COVENANTS.

18.01. Covenant of Good Faith and Fair Dealing. The parties recognize that the successful planning and execution of the Project and their respective ability to perform their obligations under this Agreement will require extraordinary cooperation among them. Accordingly, this Agreement imposes an obligation of good faith and fair dealing on Redeveloper, the IDA and the CDA in the

performance and enforcement of their respective rights and obligations hereunder. Redeveloper, IDA and CDA, with a shared commitment to honesty and integrity in the performance and administration of this Agreement, agree to the following mutual duties: (i) each will be held to a standard of good faith and fair dealing in the performance of its duties and obligations under this Agreement, (ii) each will function within the laws and statutes applicable to their duties and responsibilities, (iii) each will cooperate to facilitate the other's performance, (iv) each will avoid hindering the other's performance, (v) each will respond promptly and completely to the reasonable requests of the other, (vi) each will proceed to fulfill its obligations under this Agreement diligently and honestly, (vii) except as otherwise provided in this Agreement for the giving or the withholding of the Agencies' consent, approval or the like in its or their sole and arbitrary or absolute discretion, each agrees to use all commercially reasonable efforts to discharge their respective obligations under this Agreement and to assist each other in discharging their obligations under this Agreement which are dependent in any measure in another party's performance, and (viii) each will cooperate in the common endeavor of completing the performance and administration of this Agreement and the consummation of the transactions contemplated by this Agreement in a timely and efficient manner. Except as otherwise provided in this Agreement for a consent or approval to be given or withheld in the sole and arbitrary discretion of a party, all other consents and approvals required or desired of any party shall be promptly addressed and not unreasonably withheld or delayed; provided, further, no party shall claim that the exercise, pursuant to the express provisions of this Agreement, of a party's sole, absolute or arbitrary discretion shall be deemed a breach of this Section.

18.02. Force Majeure and Other Delay. Whenever a period of time is prescribed for action to be taken by any party to this Agreement, no party shall be liable or responsible for, and there shall be excluded from the computation of any such period of time the duration of any delays due to strikes, riots,

acts of God, shortages of labor or materials, war, insurrection, riot, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party. Whenever a party's performance is dependent in any measure on the performance of another party or third party that is not timely or that is otherwise delayed, the time for completion of the performance required of the dependant party shall be extended for a period equal to the duration of such delay.

18.03. Memorandum and Release of Memorandum.

(a) At any time after the date of this Agreement, any of the parties shall have the right to record a memorandum of this Agreement in the form annexed hereto as Exhibit 18.03(a) (the "Memorandum"). All parties to this Agreement shall execute the Memorandum, which shall be appropriately acknowledged, simultaneously with the execution of this Agreement, along with all transfer tax forms required to record the Memorandum in the appropriate offices of record.

(b) In addition, the parties hereto shall execute, and appropriately acknowledge, the Release of Memorandum of Contract (the "Release), in the form annexed hereto as Exhibit 18.03(b), simultaneously with the execution of the Memorandum. The Release shall be held in escrow by the attorneys for the Agencies. In the event the Memorandum was theretofore recorded as aforesaid, upon the earlier to occur of (i) the Completion, (ii) termination of this Agreement under Sections 14.06 or 14.07, or (iii) the expiration of the Right of First Refusal, the attorneys for the Agencies shall immediately record the Release in the appropriate offices of record.

(c) The costs of recording the Memorandum or the Release, as the case may be, shall be paid by the party electing to record such document. Upon the recording of the Memorandum or the Release, a copy shall be provided to the non-recording party's attorneys.

18.04. Condemnation.

(a) The parties acknowledge that the Redeveloper will suffer substantial damages if all or any portion of the Property shall be taken prior to Closing by any power or authority (each, a "Condemner") (i) by exercise of the right of condemnation or eminent domain, or (ii) by agreement between the IDA and/or the CDA and a Condemner authorized to exercise such right. If, at any time prior to the Closing, all or any portion of the Property shall be taken by a Condemner by exercise of such right, or if the Property or any portion of the Property becomes the subject of a condemnation or eminent domain proceeding, Redeveloper, if it concludes, in the exercise of its reasonable discretion, that loss of the Property subject to such taking or proposed taking will have a material adverse effect on the Redeveloper's ability to develop the Property in accordance with the Final Development Plan, may terminate this Agreement by notice to the IDA (the "Section 18.04 Termination Notice"). Upon delivery of the Section 18.04 Termination Notice, this Agreement shall terminate except for those provisions specified to continue after termination.

(b) Promptly following the giving of a Section 18.04 Termination Notice the Redeveloper shall determine all of its costs and expenses of any kind or nature incurred in connection with its obligations pursuant to this Agreement to the date of the Section 18.04 Termination Notice (the "Compliance Costs"), and shall notify the IDA of the same, accompanied by copies of invoices and other reasonably sufficient documentation, which costs are subject to the reasonable review and verification by the IDA. Within thirty (30) days of the taking of any property that is the subject of a Section 18.04 Termination Notice, the IDA shall pay to the Redeveloper an amount equal to (i) two (2) times the Compliance Costs, if the Condemner is the City, or any agency department or other public or quasi-public body or agency of the City, or (ii) the Compliance Costs, if the Condemner is any other body or

entity, and the entire award from the Condemner, if any, shall belong to the IDA and/or the CDA. Such amount shall bear interest at the Prime Rate plus four (4%) percent per annum until paid. The IDA's obligation to pay the Redeveloper the Compliance Costs shall be secured by the mortgage described in Section 14.05, which mortgage shall be increased in an amount to cover such costs and survive the Closing or termination of this Agreement.

(c) If less than all of the Property shall be taken or condemned as provided in Section 18.04(a), and the Redeveloper does not terminate this Agreement as provided in such section, the entire award for the taking or condemnation shall belong to the Redeveloper, and each of the IDA and the CDA waives all claims to any portion thereof. If payable prior to Closing, the award shall be retained by the IDA and paid to the Redeveloper at Closing. Each of the IDA and the CDA agrees to execute all documents that may be required in order to facilitate collection by the Redeveloper of the entire award and shall cooperate with the Redeveloper in the making and prosecution of such claim by the Redeveloper; and the parties shall continue to abide by this Agreement and the Redeveloper shall complete the Project, subject to such revisions of the Final Development Plan as the Redeveloper and the IDA shall agree to be reasonable under the circumstances.

18.05. Notices, Consents, and Approvals by the CDA. For the convenience of the parties, but except as provided expressly in this Section, the CDA hereby appoints the IDA as the CDA's agent for the purpose of giving and receiving all notices, consents and approvals under and with respect to this Agreement. Accordingly, all notices given by the Redeveloper to the IDA in connection with this Agreement shall be deemed to be notices given to and received by both the IDA and the CDA (and no separate notices need be given by the Redeveloper to the CDA). All notices, approvals and/or consents given by the IDA to the Redeveloper shall be deemed to include the separate notice, approval and/or

consent of both the IDA and the CDA (and no separate notice, consent or approval need be given by the CDA), provided, however, that the CDA's approval of the Final Development Plan, as described in Section 2.09 of this Agreement, shall be given only by the CDA and the IDA's approval of the Final Development Plan shall not be deemed to be an approval by the CDA.

18.06. Arbitration of Disputes; and Issue Resolution in Certain Circumstances.

(a) Subject to the right of any party to bring and maintain a court action to enforce the provisions of this Agreement hereof and to the provisions of paragraphs (b) through (d) below, any controversy, dispute or claim arising out of or relating to this Agreement or any of the relationships or transactions contemplated hereby, shall be settled by private arbitration employing the Construction Industry Dispute Resolution Procedures of the American Arbitration Association ("AAA") in Nassau County, New York before one arbitrator selected in the manner described below, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall not be conducted under the auspices of the AAA.

(b) It shall be a condition precedent to any party's right to commence or maintain an arbitration proceeding hereunder that such party shall first have given written notice to each of the other parties hereto of its intent to seek arbitration. During the thirty-day period commencing on the date of such written notice, the parties shall negotiate for the selection of a mutually acceptable arbitrator, who shall be independent and shall have substantial expertise regarding the subject matter of the dispute. Such arbitrator shall be acceptable to each of the parties in their sole discretion, irrespective of any other provisions of this Agreement.

(c) If the parties select a mutually acceptable arbitrator, such arbitrator shall have the right, in his or her discretion, to permit limited discovery, including not more than 35 interrogatories and

three depositions per party, and shall have subpoena power. Neither party shall be permitted to seek or receive exemplary or punitive damages. The prevailing party shall be awarded reasonable attorneys' fees and the costs of the arbitration.

(d) If any claim is found not to be arbitrable due to, *inter alia*, a statutory policy precluding the arbitration of such claim, or if the parties are unable to agree upon a mutually acceptable arbitrator (regardless of the reason), then the claim shall not be submitted to arbitration and the parties consent to the non-exclusive jurisdiction of the state and federal courts in the County of Nassau for the adjudication of such controversy, claim or dispute.

Article 19. MISCELLANEOUS

19.01. Modifications. This Agreement shall not be modified or supplemented, except by an instrument in writing signed by the IDA and the Redeveloper.

19.02. Recitals. The Recitals set forth above shall be incorporated into, and shall form a part of, this Agreement.

19.03. Governing Law. This Agreement and the rights of the parties hereunder shall be construed and governed by the laws of the State of New York without regard to principles of conflicts of laws.

19.04. Further Assurances. The parties hereto agree to make, execute and deliver all further instruments and documents reasonably necessary or proper to fully effectuate the terms, covenants and provisions of this Agreement.

19.05. Entire Agreement. All prior understandings, agreements and negotiations by and between the parties hereto are merged into this Agreement which constitutes the entire agreement of the

parties with respect to the subject matter hereof, and shall inure to and bind the successors and assigns of the respective parties hereto.

19.06. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.07. Binding Effect. This document shall not bind any party unless and until each party, in their respective sole and absolute discretion, elects to be bound hereby by executing and delivering to the other parties an executed original counterpart hereof.

19.08. Headings. The headings of the Paragraphs of this Agreement have been inserted for convenience of reference only and shall not constitute a part hereof.

19.09. Waiver of Trial by Jury. THE IDA, CDA AND THE REDEVELOPER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT.

19.10. Jurisdiction. Each party agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Agreement and, in furtherance of such agreement, each party hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over each party in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding

may be served upon each party by registered or certified mail to or by personal service at the last known address of each such party, whether such address be within or without the jurisdiction of any such court.

19.11. Notices. All notices, consents, approvals and required agreements of the parties under this Agreement (“Notices”) shall be in writing and shall be delivered either personally (receipt acknowledged), or, by certified mail or recognized overnight carrier, in either case, return receipt requested, and addressed to the respective parties at the addresses first written above (in the case of the Redeveloper, Attention: Mr. Donald Monti) and shall be deemed served on the date of delivery or the date of refusal as shown on a return receipt, as the case may be. Notices provided by the respective attorneys shall be deemed sufficient within the meaning of this paragraph without the signature of the parties themselves. Copies of Notices to the IDA shall be simultaneously sent to: Crowe, Deegan, Dickson & Benrubi, LLP, One School Street, Glen Cove, New York 11542, Attention: Daniel P. Deegan, Esq., and to Phillips, Lytle, Hitchcock, Blaine and Huber LLP, 1100 Franklin Avenue, Suite 400, Garden City, New York 11530, Attention: Milan K. Tyler, Esq.; and copies of Notices to the Redeveloper shall be simultaneously sent to: Ackerman, Levine, Cullen & Brickman, LLP, 175 Great Neck Road, Great Neck, New York 11021, Attention: Leslie J. Levine, Esq.

19.12. Corporate Terms. Any reference in this Agreement to stock interests and/or transfer or assignment of stock, shall be interpreted to include interest in a (i) general partnership (“GP”), (ii) limited liability partnership (“LLP”) or (iii) limited liability company (“LLC”) and/or transfer or assignment of interest in a GP, LLP or LLC and shall also be interpreted to include stock interest and/or transfer or assignment of stock of a partner or a member of the Redeveloper. The terms "stock" or "shares of stock" shall be interpreted to include "general partnership interest", "limited liability partnership interest" or "limited liability company interest", as the case may be, and shall also be interpreted to refer to the stock

or shares of stock or membership interest of a partner or a member of the Redeveloper, and the terms "stockholder" or "officer" shall be interpreted to include "general partner", "partner" or "member" and shall also be interpreted to refer to the stockholders or officers of the general partner, partner or member of the Redeveloper.

19.13. Conflict of Interests: IDA and CDA Representatives Not Individually Liable.

No member, official, agent or employee of the IDA or CDA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, agent or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the IDA or CDA shall be personally liable to the Redeveloper, or any successor in interest. In the event of any default or breach by the IDA or CDA or for any amount which may become due to the Redeveloper or successor or on an obligation under the terms of this Agreement.

19.14. Provisions Not Merged With Deeds. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from the IDA to the Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

19.15. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

19.16. Agents and Brokers. The parties hereto represent to each other that neither has dealt with an agent or a broker in connection with this transaction and that there is no agent or broker entitled to a commission of any kind as the result of this transfer. In the event either party has caused or suffered anything to be done which give rise to a claim of a commission by an agent or broker, said party

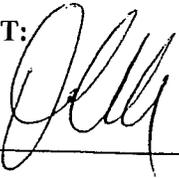
so responsible shall indemnify and hold harmless the other party from said claim, including reasonable attorneys fees incurred by said other party in defense of such claim. The provisions of this Section shall survive the closing of title or other termination of this Agreement.

19.17. Legal Fees. The parties agree that the prevailing party in any action or proceeding by or among any of the parties to enforce the provisions hereof or to recover damage for breach of any of the provisions of this Agreement shall be entitled to recover from the non-prevailing parties all of the prevailing party's reasonable costs and expenses including, without limitation, court costs and reasonable attorneys' fees, costs and expenses. Except as provided in the preceding sentence, the parties shall be responsible for their own defense and legal fees in connection with any other action or proceeding involving the Project, including those incurred in defending the contemplated development against any and all lawsuits or other legal challenges or opposition and, to preserve and enable the consummation thereof. If appropriate, the parties will coordinate any such legal efforts in furtherance of the Project. Each party shall be responsible for its respective costs in defense of any Article 78 litigation proceeding in which it is named a party.

IN WITNESS WHEREOF, each of the IDA and the CDA has caused this Agreement to be duly executed in its name and behalf of its Chairman and its seal to be hereunto duly affixed and attested by its Secretary, and the Redeveloper has caused this Agreement to be duly executed in its name and behalf, on or as of the date first above written.

(SIGNATURES APPEAR ON THE NEXT PAGE)

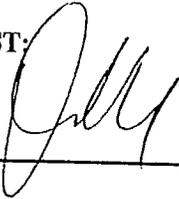
ATTEST:



GLEN COVE INDUSTRIAL
DEVELOPMENT AGENCY

By: Mary Ann Holzkamp
MARY ANN HOLZKAMP, Chairman

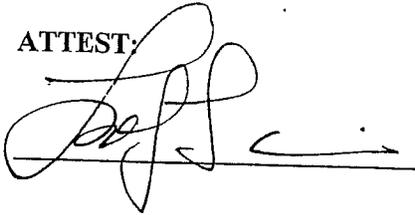
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GLEN COVE COMMUNITY
DEVELOPMENT AGENCY

By: Mary Ann Holzkamp
_____, Chairman

ATTEST:



GLEN ISLE DEVELOPMENT
COMPANY, LLC

By: Michael Posillico
Name: Michael Posillico
Title: Manager

ATTEST:



By: Wading River Management
Corp., Manager

By: Donald Monti
Name: Donald Monti
Title: President

SCHEDULE A

LEGAL DESCRIPTION

Property currently owned by IDA:

Nassau County Land and Tax Map - Section 21, Block 259, Lot 1, and Section 21, Block A, Lots 142, 431, 541, 542-545, 14, 15, 459, 648-650, and Section 31, Block G, Lot 311;

Property to be acquired by the IDA: Nassau County Land and Tax Map - Section 21, Block A, Lot 114 and the Section 21, Block A, Lot 12.

All of the foregoing being described in the attached metes and bounds description, on a parcel-by-parcel basis, as shown on the composite sketch attached hereto, and subject to final survey.

SCHEDULE 7.02

PERMITTED ENCUMBRANCES

[To be provided]

EXHIBIT 5.02

ESCROW AGREEMENT