

Attachment A to Resolution #19-335
Form of Redevelopment Agreement

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE TOWNSHIP OF NEPTUNE

AND

OG NORTH END DEVELOPMENT, LLC

Date: , 2019

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EXHIBITS

- A. Property Survey by Gallas Survey Group, July 22, 2015
- B. Pre-Submission Form by OGNED, November 13, 2018
- C. Common Elements Maintenance Plan- Outline by OGNED, May 14, 2019
- D.
 - 1. Construction Mitigation Plan by InSite Engineering C201, June 21, 2019
 - 2. Truck Route Map by Maser Consulting, April 8, 2019
- E. Hotel Loading/Surface Parking by InSite Engineering C301, June 21, 2019
- F. Parking Plan Garage Level by Shore Point Architecture, A-1, June 21, 2019
- G. Open Space Diagram by Melillo & Bauer Associates L-6, July 8, 2019
- H. Project Description by OGNED, February 1, 2019
- I. Project Schedule by OGNED, 2019
- J. Project Team by OGNED, August 8, 2019
- K. Public Access Easement Agreement Form
- L. Redeveloper's Declaration Form
- M. Soils & Foundation Investigation Report by Melick-Tully, April 23, 2007
- N. Stormwater Management Plan by InSite Engineering, June 21, 2019
- O. Traffic Impact Executive Summary by Maser Consulting, April 8, 2019
- P. Site Plan by Insite Engineering, June 21, 2019
- Q. Boardwalk Gateway Feature by Shore Point Architecture, June 21, 2019
- R. Green Roof Sustainability Plan by Melillo & Bauer Associates L-7, July 8, 2019
- S. Escrow Agreement by Neptune Township
- T.
 - 1. Wesley Lake Retaining Wall Estimate
 - 2. Wesley Lake Retaining Wall Concept Plan by InSite Engineering, July 30, 2019
- U. Municipal Parking Lot Plan by Neptune Township
- V. Municipal Parking Lot Estimate by Neptune Engineering
- W. Insurance Coverage Requirements
- X. Township Project Team
- Y. Off-Site Improvements Escrow Agreement

THIS REDEVELOPMENT AGREEMENT, made as of the ____ day of _____, 2019 (the **"Effective Date"**) by and between the **TOWNSHIP OF NEPTUNE**, a municipal corporation of the State of New Jersey acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, with offices at 25 Neptune Boulevard, Neptune, New Jersey 07753 (the **"Township"**) and **OG NORTH END DEVELOPMENT, LLC**, a limited liability company authorized to do business in the State of New Jersey, with offices at 801-E Main Street, Belmar, New Jersey 07719 (hereinafter referred to as **"OGNED"** or **"Redeveloper"**) (collectively, the **"Parties"** or each, a **"Party"**) (the **"Agreement"**).

RECITALS

WHEREAS (#1), the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the **"Act"**), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS (#2), the Township desires that the land located in an area which has been determined to be an area in need of redevelopment in accordance with the Act (the **"Redevelopment Area"**), currently designated on the Tax Map of the Township of Neptune as Block 1.01, Lots 3 and 4 and a portion of Lot 2 that is more commonly known as "North End", as same is set forth on the draft survey dated July 22, 2015 and prepared by Gallas Surveying Group, a copy of which is attached hereto as **Exhibit "A"**, more commonly known collectively as the "North End" (referred to herein as the **"Project Site"**), be redeveloped in accordance with the Ocean Grove North End Redevelopment Plan (the **"Redevelopment Plan"**); and

WHEREAS (#3), the Project Site, which comprises approximately three (3) acres, is owned by the Ocean Grove Camp Meeting Association (**"CMA"**); and

WHEREAS (#4), on or about May 17, 2018, OGNED submitted a Pre-Submission Form to the Township's Redevelopment Committee seeking to be designated as the Redeveloper of the Project Site; and

WHEREAS (#5), following certain preliminary reviews, in November 2018, OGNED submitted an updated Pre-Submission Form, a copy of which is attached hereto as **Exhibit "B"** (the **"Proposal"**), outlining its intention to redevelop the Project Site, together with a set of preliminary plans which were also submitted to the Township's Historic Preservation Commission for review; and

WHEREAS (#6), OGNED is a joint venture entity which is comprised of MB2 Ocean Grove, LLC (**"MB2"**), an affiliate of MB1 Capital Partners, LLC (**"MB1"**), and Wesley Atlantic Village Enterprises, LLC (**"WAVE"**); and

WHEREAS (#7), OGNED is the Optionee pursuant to an Option Agreement for the Long Term Lease of the Project Site with CMA, dated May 2, 2018 (the **"Option Agreement"**); and

WHEREAS (#8), the Option Agreement provides OGNED with the option to enter into a long term lease for the Project Site in order for OGNED to redevelop the Project Site, subject to the Township's approval, which option is currently to be exercised by August 1, 2019; and

WHEREAS (#9), upon the exercise of said option, OGNED and CMA will enter into a separate agreement in the form attached to the Option Agreement containing all of the terms and provisions for OGNED's long term lease of the Project Site (the **"Ground Lease Agreement"**); and

WHEREAS (#10), the Proposal, as that term is defined below, calls for, upon the exercise of the option pursuant to the Option Agreement, the implementation of a mixed use redevelopment project comprising, *inter alia*, two (2) buildings, the first of which will include a

new, iconic Victorian boutique hotel containing no more than forty (40) rooms, a residential condominium building containing no more than thirty (30) 2-bedroom condominiums at market rate, and approximately 7,600 sq. ft. of boardwalk retail; a second building which will contain no more than nine (9) condominium units, of which six (6) will be 2-bedroom residential condominiums and three (3) will be 3-bedroom residential condominiums; as well as ten (10) 3-bedroom single family homes; additionally, no more than twenty (20) surface parking spaces, and no less than one hundred and forty (140) parking spaces within a subterranean parking structure will be provided; the creation or improvement of certain public open space such as a promenade along Wesley Lake and the preservation of view corridors along Spray Avenue through to Wesley Lake, all in accordance with, *inter alia*, the Redevelopment Plan and the terms and conditions of this Agreement; and

WHEREAS (#11), the implementation of the Proposal will also result in the reconstruction of the Wesley Lake Retaining Wall in addition to the implementation of certain public amenities, at no cost to the Township, all as further described herein, as well as the generation of approximately forty (40) hotel/retail/maintenance jobs and one hundred (100) construction jobs; and

WHEREAS (#12), the Township's Redevelopment Committee vetted the details comprising the Proposal and met with OGNED on several occasions to further discuss the Proposal and the implementation of the Redevelopment Plan, generally; and

WHEREAS (#13), additionally, the Township's Chief Financial Officer obtained and reviewed certain financial information from OGNED as well as the entities which comprise OGNED and determined that OGNED possesses the financial strength and capability to finance

and/or obtain such financing as may be necessary to fully implement the Proposal in accordance with, *inter alia*, the Redevelopment Plan; and

WHEREAS (#14), as authorized by Resolution No. 18-395 adopted by the Township Committee on November 26, 2018, the Township designated OGNED as the redeveloper of the Project Site conditioned upon the successful negotiation of a Redevelopment Agreement setting forth all the terms and conditions of the implementation of a redevelopment project upon the Project Site; and

WHEREAS (#15), on or about December 7, 2018, also as authorized by Resolution No. 18-395 adopted by the Township Committee on November 26, 2018, the Township and OGNED entered into a Conditional Designation and Interim Cost Agreement (the “**Conditional Designation Agreement**”) which, *inter alia*, required OGNED to reimburse all of the costs and fees incurred and to be incurred by the Township in connection with the review of the Proposal and the preparation and negotiation of the terms of a Redevelopment Agreement, among other such expenses; and

WHEREAS (#16), as authorized by Resolution No. 19-186 adopted by the Township Committee on April 22, 2019, the Township authorized an extension of the term of the Conditional Designation Agreement, which term is currently in effect; and

WHEREAS (#17), since then, the Township and the Redeveloper have engaged in extensive negotiations and the Township has determined that in furtherance of the Township’s goals and objectives to implement the redevelopment contemplated in the Redevelopment Plan, subject to the provisions herein, it is in the Township’s best interests to enter into this Agreement with OGNED being designated as the exclusive Redeveloper of the Project Site; and

WHEREAS (#18), the Redeveloper acknowledges and agrees herein that all uses to which the Project Site may be devoted are controlled by the Redevelopment Plan, this Agreement, and Governmental Approvals, as hereinafter defined, and that under no circumstances shall the Redeveloper undertake any development or construction unless same is in accordance with the Redevelopment Plan, this Agreement and any Governmental Approvals; and

WHEREAS (#19), the Township and the Redeveloper (collectively, the “**Parties**”) desire to enter into this Agreement for the purpose of setting forth in greater detail their respective undertakings, rights and obligations in connection with the development and construction of the Project, as that term is defined herein and which is based upon the Proposal.

NOW THEREFORE, in consideration of the covenants and conditions herein set forth, the Township and Redeveloper do hereby covenant, promise and agree as follows:

ARTICLE 1

DEFINITIONS

Definitions. Except as expressly provided herein to the contrary, all capitalized terms used in this Agreement and Exhibits hereto shall have the following meanings:

“**Access Work**” shall have the same meaning set forth in **Section 12.1(20)**.

“**Actual Costs**” shall have the meaning set forth in **Section 12.7**.

“**Adjoining Parcel Redeveloper**” shall have the meaning set forth in **Section 12.7**.

“**Affiliate**” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control,” including the correlative meanings of the terms “controlled by” and “under common control with,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the

management policies of such Person; provided that the right of another entity or entities to consent to “major decisions” shall not be deemed to negate the existence of control (however, for the avoidance of doubt, the foregoing shall not be deemed to excuse Redeveloper or any Affiliate from the performance of any of its obligations under this Agreement).

“**Agreement**” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“**Boardwalk Gateway Feature**” shall have the meaning set forth in **Section 2.1(7)**.

“**Boardwalk Retail**” or “**Boardwalk Retail Units**” means those collective units to be utilized as boardwalk retail spaces comprising a total of approximately 8,000 sq. ft. within Building 1 to be constructed as part of the Project.

“**Building 1**” shall have the meaning set forth in **Section 2.1(4)**.

“**Building 2**” shall have the meaning set forth in **Section 2.1(4)**.

“**Buildings**” means Building 1 and Building 2, collectively.

“**Certificate of Appropriateness**” shall mean the certificate that Redeveloper is required to obtain from the Historic Preservation Commission in connection with the design of the Project components overall.

“**Certificate of Completion**” means a recordable, conclusive determination issued by the Township evidencing the satisfaction and termination of the agreements and covenants in this Agreement, as applicable, and compliance with this Agreement and the Redevelopment Plan with respect to the Redeveloper's obligation to implement the Project or any portion thereof, as follows: (i) based upon its review of a written certification of a duly authorized officer of Redeveloper stating that: (a) the Project has been completed and all labor, services, materials and

supplies used in connection thereto have been paid for (or, if disputed, bonded for) and (b) the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project; and (ii) a written determination by the Township that the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project based upon: (a) the Township Engineer Certification and (b) any other physical inspection of the Project and/or review of such other documentation or information that the Township shall reasonably deem relevant and appropriate (the “**Written Determination**”). Any Certificate of Completion for the Project shall be formally approved by Resolution of the Township Committee and such Resolution in and of itself may constitute the Written Determination defined in this paragraph.

“**Certificate of Occupancy**” means the certificate provided for at N.J.S.A. 52:27D-133, whether temporary or permanent, indicating that the construction or a specific portion of the construction has been completed in accordance with the applicable construction permit(s), the applicable Ordinances of the Township of Neptune, the State of New Jersey Uniform Construction Code, and any other ordinance or regulation implementing the State of New Jersey Uniform Construction Code.

“**Claims**” shall have the meaning set forth in **Section 13.1(a)**.

“**CMA**” means the Ocean Grove Camp Meeting Association.

“**Common Element Maintenance Plan**” means the plan for the maintenance of the Common Elements within the Condominium Units, an outline of which has been submitted and is attached hereto as **Exhibit “C”**, and a copy of the complete, more detailed plan shall be submitted to the Township upon completion of same.

“Conditional Designation Agreement” means the terms and conditions of the that Conditional Designation Agreement entered into by and between the Township and the Redeveloper on December 7, 2018, as amended by First Amendment dated April 22, 2019, which sets forth the parameters by which OGNED was designated as the Conditional Redeveloper of the Project Site and which required, *inter alia*, the establishment of an escrow fund for the payment of the Township Costs during the interim. Upon the Effective Date of this Agreement, the Conditional Designation Agreement shall be terminated and the terms and obligations contained therein shall be replaced by the terms contained herein.

“Conditions Precedent” shall have the meaning set forth in **Section 8.1(1)(d)**.

“Condominium Association” shall have the meaning set forth in **Section 2.1(6)**.

“Condominium Deed” shall have the meaning set forth in **Section 2.1(6)**.

“Condominium Unit” shall have the meaning set forth in **Section 2.1(6)**.

“Consistency Determination Review Period” shall have the meaning set forth in **Section 2.3**.

“Construction Mitigation Plan” means the plan addressing the mitigation of the impact of the construction activities upon the surrounding neighborhoods attached hereto as **Exhibit “D”** which depicts and otherwise addresses pedestrian and vehicle routing, material staging, fencing, signage, safety measures and other such mitigation measures, including with regard to noise and dust, at each stage of construction.

“Controls” means engineering and/or institutional controls, as same are defined by applicable Environmental Laws, which have been or will be implemented upon or in connection with the Project Site.

“DCA” means the New Jersey Department of Community Affairs.

“Deposit Amount” shall have the meaning set forth in **Section 12.7(c)**.

“Development Fee Ordinance” means Ordinance No. 12-13 of the Township of Neptune.

“Effective Date” means the date this Agreement is last executed by the authorized representative of the Township.

“Emerging Contaminant(s) of Concern” means substances, contaminants or other materials that are identified as such by either the USEPA or the NJDEP in statute, regulation or guidance documents, and which require investigation and/or remediation.

“Environmental Laws” means any present or future applicable federal, state or local law, rule, regulation, order, ordinance or other legal requirement related to the release of Hazardous Substances to the environment, including with regard to Emerging Contaminants of Concern, and the related protection of human health and the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.* (“CERCLA”); Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (“RCRA”); Site Remediation Reform Act, N.J.S.A. 58:10C-1, *et seq.* (“SRRA”); Brownfield and Contaminated Sites Remediation Act, N.J.S.A. 58:10B-1, *et seq.* (“BCSRA”); Industrial Site Recovery Act, N.J.S.A. 13:1K-6, *et seq.* (“ISRA”); New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, *et seq.* (the “Spill Act”); Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, *et seq.*; Water Pollution Control Act, N.J.S.A. 38:10A-1, *et seq.*; Solid Waste Management Act, N.J.S.A. 13:1E-1, *et seq.*; Administrative Requirements for the Remediation of Contaminated Sites (“ARRCS”), N.J.A.C. 7:26C; Remediation Standards Rules, N.J.A.C. 7:26D; and the Technical Requirements for Site Remediation (“Technical Rules”), N.J.A.C. 7:26E, and any other such laws, ordinances, rules,

regulations, court orders, judgments and common law which govern (a) the existence, cleanup and/or remedy of any Hazardous Substances on the subject properties; (b) the protection of the environment from spilled, deposited or otherwise discharged Hazardous Substances; or (c) the control, use, generation, transport, treatment, removal, storage, discharge or recovery of Hazardous Substances.

“Escrow Holder” shall have the meaning set forth in **Section 12.7**.

“Estoppel Certificate” means a certificate issued by either of the Parties either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement nor any event which, with the passage of time and the provision of notice, would result in a default or breach under this Agreement, or stating the nature of the default or breach, if any. In the event the Estoppel Certificate discloses such a default or breach, it shall also state the manner in which such default or breach may be cured.

“Excepted Claims” shall have the meaning set forth in **Section 13.1(a)**.

“Existing Utilities” means any utilities which currently serve the Project Site or any portion thereof.

“Force Majeure” shall apply to all time limitations and other obligations and means any acts of God, fire, volcano, earthquake, hurricane, blizzard, infectious disease, technological disaster, catastrophe, large scale infestation of any type, tremors, flood, explosion, release of nuclear radiation, release of biotoxic or of biochemical agent(s), the elements, war, blockade, riots, mob violence or civil disturbance, any act(s) of terrorism or terroristic threat, an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, governmentally imposed moratoriums, court orders, laws, rules, regulations or

other orders of governmental or public agencies, bodies or authorities, legal inability to comply resulting from a change of: municipal law(s) regulating land use and construction; any legal requirements under any applicable environmental laws, as well as all known and unknown federal Environmental Protection Agency (EPA or USEPA) and New Jersey Department of Environmental Protection (DEP or NJDEP) clearances, approvals or permits typical of the development process; and any unreasonable delays in the Redeveloper's receipt of any necessary Governmental Approvals, as same are defined herein, or any other cause not within the reasonable control of the Redeveloper, but only if (i) such events directly cause an inability to perform a material provision of this Agreement; (ii) such events are out of the reasonable control of the Party claiming relief; and (iii) for so long as the event is occurring or has occurred.

"Foreclosure" means that event in which a Holder forecloses its mortgage secured by the Project Site, or any part thereof, or takes title to the Project Site, or any part thereof, by deed-in-lieu of foreclosure or such similar transaction.

"Governing Body" or **"Township Committee"** means the Township Committee of the Township of Neptune.

"Governmental Application(s)" means any and all submissions, supporting documents, reports or other proofs transmitted to any state, federal or local governmental office, agency, authority, department, officer or agent for the purpose of obtaining authorization or approval of any aspect of the Project.

"Governmental Approval(s)" means all necessary reviews, consents, opinions, permits or other approvals of any kind legally required by any federal, state, county or local Governmental Body or quasi-governmental entity having jurisdiction over any aspect of the

implementation or construction of the Project, including, but not limited to, preliminary and final site plan and subdivision approval and construction permits.

“Governmental Body” or **“Governmental Bodies”** means any federal, state, county, legislative or executive office or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Township, the County of Monmouth, the State of New Jersey or the United States of America.

“Hazardous Substance” means any substance, chemical or waste that is hazardous or toxic or a pollutant or contaminant, or otherwise hazardous to human health and/or the environment, including but not limited to substances that have been identified by USEPA and/or NJDEP as Emerging Contaminants of Concern, as that term is defined herein.

“Holder” means the mortgagee or its Affiliate, as that term is defined herein, to the Project Site or any portion of the Project Site.

“Holder’s Options” shall have the meaning set forth in **Section 16.4(1)**.

“Hotel” means that new boutique Victorian hotel comprising no more than forty (40) rooms to be constructed upon the Project Site immediately adjacent to the boardwalk, as part of the Project.

“Hotel Loading Bays” means the loading bays which shall service the Hotel operations as same are depicted on **Exhibit “E”**.

“Infrastructure Improvements” shall have the meaning set forth in **Section 2.1(8)**.

“Landscaping Plan” means a detailed plan for landscaping to be implemented upon or around the Project Site as part of the Project, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application.

“Legal Requirements” or **“Applicable Laws”** means any laws, statutes, codes, ordinances, orders, regulations or other such legal requirements of any governmental body, now or hereafter in effect, and, in each case, as may be amended.

“Lighting Plan” means a detailed plan for lighting to be implemented upon or around the Project Site as part of the Project, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application.

“LSRP” means the Licensed Site Remediation Professional retained by the Redeveloper.

“Municipal Parking Lot Estimate” shall have the meaning set forth in **Section 2.1(19)(iii)**.

“Municipal Parking Lot” means the Township-owned parking lot on Spray Avenue adjacent to the Project Site.

“Municipal Parking Lot Plan” shall have the meaning set forth in **Section 2.1(19)**.

“NJDEP” or **“DEP”** means the New Jersey Department of Environmental Protection.

“Off-Site Improvements Escrow Agreement” shall have the meaning set forth in **Section 12.7 (c)**.

“Parking Garage” means the subterranean parking structure to be constructed upon the Project Site as part of the Project.

“Parking Plan” means the detailed plan for the implementation of parking of vehicles upon the Project Site as part of the Project, a copy of which is attached hereto as **Exhibits “E” and “F”**.

“Parties” or **“Party”** shall have the meaning set forth in the preamble of this Agreement.

“Pedestrian Plaza” means the real property comprising the plaza-like area in front of the grand entryway to the Hotel, running south from the Hotel entryway to Spray Avenue, to be improved as part of the Project as set forth herein, and as same is depicted on **Exhibit “G”**, the

access to which shall be reasonably determined by the Hotel as set forth in the Public Access Easement Agreement.

“Permitted Transfers” means the following transfers, subject to the terms and limitations herein: (a) utility and other development easements; (b) leases or any such conveyances of any interest in one or more of the Residential Condominiums, guest rooms within the Hotel, Boardwalk Retail Units, and/or any Single Family Homes and/or any parking license agreements for parking spaces; (c) a mortgage or mortgages (including, but not limited to, collateral assignment of this Agreement to the mortgage holder to be effective, at the option of the mortgagee, upon default by Redeveloper under the mortgage documents), for the purposes of (i) financing any aspect of the Project, provided that the occurrence of an Event of Default as to Redeveloper hereunder also constitutes an event of default by Redeveloper under the loan documents documenting such financing; and (ii) permanent financing upon substantial completion of construction of the Project; (d) an assignment and/or transfer of Redeveloper’s interest in this Agreement to an Affiliate, provided that the Affiliate is under the control of any of the current owners of the Redeveloper and provided that such new entity is subject to the terms of this Agreement; (e) transfer of any interest in the Project Site or any portion thereof to a qualified urban renewal entity under the control of Redeveloper; (f) transfers among the existing members of Redeveloper or direct or indirect holders of interests in Redeveloper; (g) transfers by operation of law as a result of death of any individual; (h) transfers by any owner(s) of a direct or indirect interest in Redeveloper to an entity owned by such owner(s); (i) transfers of direct or indirect interests in Redeveloper so long as OGNED or any of its Affiliates remain as a direct or indirect owner of Redeveloper; (j) transfers of direct or indirect equity interests in Redeveloper for financing purposes; (k) deed notices and other documents required to implement any

Controls pursuant to a Remedial Action Workplan; and (l) the sale and conveyance of any Condominium Units to any individuals within the condominiums that are proposed to be formed, including with regard to the Single Family Homes.

“Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, urban renewal entity, trust, unincorporated association, institution, public or governmental body, or any other entity.

“Planning Board” means the Planning Board of the Township of Neptune and any successors thereto to which Redeveloper shall make application for site plan approval in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

“Project” shall have the meaning set forth in **Section 2.1**.

“Project Agreements” means those agreements entered into by Redeveloper in connection with the design and construction of the Project.

“Project Costs” shall have the meaning set forth in **Section 12.4**.

“Project Costs Share” shall have the meaning set forth in **Section 12.7**.

“Project Description” means the narrative description of the Project set forth in **Recital WHEREAS #10** and/or on **Exhibit “H”**, respectively.

“Project Funds” shall have the meaning set forth in **Section 12.5**.

“Project Site” means the real property currently designated on the Tax Map of the Township of Neptune as Block 101, Lots 3 and 4 and a portion of Lot 2 that is more commonly known as the “North End”, as same is set forth on the draft survey dated July 22, 2015 and prepared by Gallas Surveying Group, a copy of which is attached hereto as **Exhibit “A”**, more commonly known collectively as the “North End”, upon which the Project is to be constructed.

“Project Schedule” means the detailed schedule setting forth the dates, timeframes or triggering events upon which, *inter alia*, construction shall commence and be completed and other such milestones associated with the construction and implementation of the Project, a copy of which is attached hereto as **Exhibit “I”**.

“Project Team” means those individuals who will be directly responsible for management of the Project, Governmental Approvals and construction, as set forth on **Exhibit “J”**.

“Proposal” shall have the meaning set forth in **Recitals WHEREAS (#5)**.

“Public Access Areas” collectively means all of the publicly accessible areas within the Project Site to which the public shall have certain access as of the recording in the Monmouth County Clerk’s Office and pursuant to the terms of a Public Access Easement Agreement, subject to the Township Committee’s adoption of any requisite legislation, as such areas are more specifically depicted or delineated on **Exhibit “G”** and to be described in a legal description to be attached to the Public Access Easement Agreement upon completion of the Project. Such Public Access Areas shall include the meandering public walkway through the Project Site as same is depicted on **Exhibit “G”** as well as the Waterfront Promenade.

“Public Access Easement Agreement” means the agreement in substantially the form attached hereto as **Exhibit “K”** to be executed by and between the Parties, and held in escrow pending the completion of the Project, establishing the right of the public to access the Public Access Areas, subject to the adoption of any requisite legislation by the Township Committee and which is intended by the Parties to become effective upon and after implementation of the improvements comprising the Public Access Areas at which time a legal description of the as-

built Public Access Areas shall be prepared, attached and the Public Access Easement Agreement is intended to be recorded.

“Redeveloper” shall have the meaning set forth in the preamble of this Agreement.

“Redeveloper Covenants, Conditions and Restrictions” means those promises and restrictions to which Redeveloper agrees to be legally bound pursuant to this Agreement on behalf of itself and its successors and assigns, as may be applicable, as more specifically set forth in **Section 7.1**.

“Redeveloper’s Declaration” means a recordable document approved and executed by the Parties imposing the Redeveloper Covenants, Conditions and Restrictions upon the Project Site or any portion thereof, subject to the terms and provisions herein, all as may be limited by the rights of a Holder as may be granted herein, in substantially the form attached hereto as **Exhibit “L”**.

“Redeveloper’s Remediation” means any environmental investigation and remediation to be undertaken by Redeveloper upon or in connection with the Project Site as further set forth in **Section 2.1**.

“Redevelopment Law” means the State of New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as this statute may be amended from time to time.

“Redevelopment Plan” means the Ocean Grove North End Redevelopment Plan.

“Reimbursement Share” shall have the meaning set forth in **Section 12.7**.

“Residential Condominiums” means that component of the Project comprising no more than thirty-nine (39) residential condominium units to be distributed within two (2) buildings (Building 1 and Building 2) upon the Project Site which are to be constructed as part of the Project.

“Security Plan” means a detailed plan for security measures to be implemented upon the Project Site as part of the Project, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application.

“Signage Plan” means a detailed plan for signage to be implemented upon or around the Project Site as part of the Project, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application.

“Single Family Homes” means that set of standalone residences comprising no more than ten (10) single family homes upon the Project Site to be constructed as part of the Project.

“Site Plans” are the detailed concept plans attached hereto as **Exhibit “P”**.

“Soils and Foundation Investigation Report” means the report attached hereto as **Exhibit “M”**.

“Stormwater Management Plan” means the detailed plan for the management of stormwater upon the Project Site, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application and with such techniques and methods to comprise, in part, those set forth in **Exhibit “N”**.

“Streetscaping Plan” means a detailed plan for streetscaping to be implemented upon, about or in connection with the Project Site as part of the Project, which shall be submitted to the Planning Board in connection with Redeveloper’s site plan application.

“Subsequent Redeveloper” means a responsible Person who has: (i) submitted evidence reasonably satisfactory to the Township that it has the qualifications and financial responsibility necessary to perform Redeveloper’s obligations under this Redevelopment Agreement; (ii) formally been designated by the Township as a Subsequent Redeveloper for the Project; and (iii) expressly assumed Redeveloper’s rights and obligations under this Redevelopment Agreement or

has entered into a similar written agreement with the Township for the performance or completion of the performance of the Project as the Project is described herein, in accordance with Applicable Laws, after formal approval by the Township, subject to reasonable extensions of the Project Schedule to be granted by the Township in writing.

“Subsequent Redevelopment Agreement” shall have the meaning set forth in **Section 16.4(1)(a)**.

“Tolling Event” means: (i) an Event of Default by the Township; (ii) an act or omission of the Township that has a material and adverse effect on the ability of the Redeveloper to perform any obligation, requirement, commitment or responsibility set forth by this Agreement; (iii) any litigation regarding any Governmental Approval or regarding the denial or conditions to any Governmental Approval; or (iv) any governmental moratorium that prevents construction, development or occupancy of the Project.

“Township” means the Township of Neptune.

“Township Costs” means and shall include all reasonable and necessary costs and fees incurred by the Township in connection with, related to or arising out of the Project, any legal challenges or litigation related to the Project, and/or the Township’s performance of any covenant, condition, obligation or commitment set forth in this Redevelopment Agreement, including the following: all fees and costs incurred by the Historic Preservation Commission in connection with the Project;; professional fees charged by legal, engineering or financial consultant, planner, contractor or vendor or other such professional retained by the Township in connection with the same; and any other costs and fees incurred by the Township at any time as may be enumerated in this Redevelopment Agreement, provided that Township Costs shall exclude any of the foregoing but only to the extent (i) the Township is determined to be

responsible or at fault for such costs as same is decided by a court of competent jurisdiction or (ii) the Township's performance is or would be considered, in whole or in part, duplicative of any performance or service ordinarily provided by the Township pursuant to under Applicable Laws, including those covered by costs and fees that the Redeveloper has already paid or will be obligated to pay to the Township, such as any application fees for certain permits, escrows or any other fees required to be paid or reimbursed to the Township under any Applicable Laws in connection with obtaining approvals for the Project and construction and/or implementation of the Project; or (iii) time expended by any staff of the Township.

"Township Engineer" means the engineer for the Township of Neptune.

"Township Indemnified Parties" means the Township and its officers, agents, employees, contractors and consultants.

"Traffic Impact Study" means a detailed report that sets forth the evaluation of the traffic and parking impacts to be caused by the full implementation of the Project and is based upon the needs created by the entire Project, a copy of which shall be submitted to the Planning Board in connection with Redeveloper's site plan application, an executive summary of same having been attached hereto as **Exhibit "O"**.

"Transfer" means any transaction by which a Transferee, as that term is defined herein, obtains an interest in the Project Site or the Project or any portion thereof, by means or methods including, but not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

“Transferee” means any party to whom an interest in the Project Site or any portion thereof, is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors.

“Transition Period” shall have the meaning set forth in **Section 16.4(1)**.

“USEPA” means the United States Environmental Protection Agency.

“Waterfront Promenade” means the real property running the length of the Project Site along Wesley Lake to be improved as part of the Project as set forth herein, as same is depicted on **Exhibit “G”**, which shall be dedicated open public space.

“Wesley Lake Retaining Wall” means the structural retaining wall / bulkhead surrounding Wesley Lake in that area of Wesley Lake which fronts the Project Site.

“Wesley Lake Retaining Wall Estimate” shall have the meaning set forth in **Section 2.1(18)(iv)**.

“Wesley Lake Retaining Wall Plans” means the engineered plans to be prepared by Redeveloper for the Wesley Lake Retaining Wall Work.

“Wesley Lake Retaining Wall Work” means the replacement and/or reconstruction work to be undertaken by Redeveloper as part of the Project in accordance with the Redevelopment Plan, with such detailed engineering plans for same to be submitted to the Township Engineer for approval prior to and subject to the permitting requirements of the Township and any requisite approvals by the NJDEP, including with regard but not limited to the State Historic Preservation Office (SHPO).

“Written Determination” is defined in the definition of Certificate of Completion.

ARTICLE II

REDEVELOPMENT PROJECT

SECTION 2.1 Scope and Implementation of the Project. OG North End Development, LLC is hereby designated as the exclusive Redeveloper of the Project Site and Redeveloper agrees to perform and complete the following tasks consistent with the Site Plans collectively attached hereto as **Exhibit "P"** and the Project Description attached hereto as **Exhibit "H"**, in accordance and compliance with the terms and conditions of this Agreement, the Redevelopment Plan (with regard to the Project Site, it being acknowledged that certain requirements of the Redevelopment Plan cannot reasonably be performed by Redeveloper on land it does not own or otherwise control), all Governmental Approvals and all applicable Legal Requirements and Environmental Laws, in a good and workmanlike manner and consistent with the high level of skill and care ordinarily exercised by developers of first class residential, commercial and retail developments (collectively, the "**Project**"):

1. Site Preparation: site preparation of the Project Site for development and construction; and
2. Governmental Approvals: obtaining all applicable Governmental Approvals, as that term is defined herein, for the Project; and
3. Environmental Investigation and Remediation: to the extent that environmental contamination resulting from the presence of exceedances of Hazardous Substances is encountered or caused by Redeveloper in the construction or implementation of the Project, Redeveloper shall promptly notify the Township and, utilizing an LSRP, undertake the investigation and remediation of same, including with regard to soils, groundwater and vapors in, on, under and upon the Project Site in accordance and compliance with all applicable

Environmental Laws, and to the extent the parcel or any portion thereof shall be utilized for residential purposes, such contamination shall be remediated in accordance with the applicable presumptive remediation standards for residential use, in compliance with all applicable Environmental Laws, including without limitation required notification of governmental agencies having jurisdiction thereof (“**Redeveloper’s Remediation**”); and

4. Mixed-Use Project: development and construction of a mixed-use project comprising two (2) separate buildings (hereinafter referred to as “**Building 1**”, and “**Building 2**” and collectively, the “**Buildings**”) which shall be fireproofed and floodproofed according to Legal Requirements applicable to the Project including residential, hotel, and retail components to be built upon a common subterranean parking structure; Building 1 will comprise the boutique, Victorian-design Hotel to be located upon the southeast corner of the Project Site containing no more than forty (40) guest rooms, emulating the original historic hotel known as the “North End Hotel,” and which shall be operated by a reputable hotel operator in compliance with all applicable Legal Requirements, and will be connected to a multi-story structure comprising Boardwalk Retail Units and no more than thirty (30) Residential Condominiums; Building 2 will comprise no more than nine (9) Residential Condominiums, and the Single Family Homes, as such layout is depicted on **Exhibit “P”**, all in accordance with the Redevelopment Plan, this Agreement and Governmental Approvals, including any Certificate of Appropriateness issued by the Historic Preservation Commission and any site plan approval issued by the Planning Board, and as further described below:

(i) Design: the Parties agree that the general design of the Buildings shall maintain the Victorian character of the North End area of the Ocean Grove section of the Township and the Parties further acknowledge that the specific design shall be subject to review

and modification by the Township's Historic Preservation Commission and its issuance of a Certificate of Appropriateness; and

(ii) Parking: parking spaces within the Parking Garage shall be allocated as may be further set forth in the Parking Plan and further, parking to support the Project shall be subject to Residential Site Improvement Standards (RSIS) as same are set forth in N.J.A.C. 5:21; and

(iii) Loading Docks: loading docks shall be located behind the Hotel, as further depicted on **Exhibit "E"**.

5. Intentionally Deleted.

6. Form of Ownership and Maintenance of Common Elements: the Residential Condominiums, Hotel, Boardwalk Retail, Single Family Homes and Parking Garage will be constructed upon the Project Site which is owned by CMA and leased to/controlled by Redeveloper. Upon construction, each component of the Project is to be converted to condominium form of ownership pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1, et seq. It is anticipated that each of the thirty-nine (39) Residential Condominiums and each of the ten (10) Single Family Homes, as well as the Hotel and the Boardwalk Retail components of the Project, will comprise separate condominium units and will be owned individually (each, a **"Condominium Unit"**) and a single condominium association will be formed to manage the common elements of the Project (the **"Condominium Association"**), including but not limited to the Parking Garage and the Waterfront Promenade (the **"Common Elements"**).

Ownership of each Condominium Unit is to be documented by a Condominium Unit Deed and an Assignment of Lease (i.e. an assignment of the current Ground Lease Agreement by CMA, from OGNED, to each buyer of a Condominium Unit), together with an Amended and

Restated Lease Agreement to be entered into by and between the CMA and each buyer of a Condominium Unit (collectively, each a **“Condominium Deed”**). Each Condominium Deed will convey ownership of the respective Condominium Deed together with the pro rata share of the rights and obligations set forth within the Ground Lease Agreement. Upon the conveyance of each Condominium Deed, the terms of the Ground Lease Agreement as between CMA and OGNED would no longer apply to that portion of the real property within the Project Site being conveyed. Once all fifty-one (51) of the Condominium Units have been sold to buyers, the terms of the Ground Lease Agreement as between CMA and OGNED would not apply to any portion of the Property and the only parties in interest thereafter would be CMA and the buyers of the Condominium Units. All of the foregoing shall be subject to approval by the New Jersey Department of Community Affairs (**“DCA”**) of a Public Offering Statement and a Master Deed/By-Laws, in compliance with the New Jersey Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21, et seq. and the New Jersey Condominium Act, N.J.S.A. 46:8B-1, et seq.

Except as expressly set forth herein with specific regard to the maintenance of the Wesley Lake Retaining Wall, Redeveloper acknowledges and agrees that the Township shall not be responsible for the maintenance of any Common Elements upon the Project Site. Rather, regular maintenance of the Common Elements shall be the responsibility of each respective Condominium Unit pursuant to the terms of a Master Deed to be recorded for the creation of the Condominium proposed. Redeveloper shall cause each of the Condominium Deeds to expressly reflect same, subject to approval by DCA. The Township will cooperate in good faith with regard to Redeveloper’s pursuit of such related approvals from DCA, and any reasonable costs or fees incurred by the Township in so doing shall be deemed to be **“Township Costs”** hereunder.

7. Boardwalk Gateway Feature: construction of a boardwalk gateway feature depicted on Exhibit “Q” marking the entry into the Township of Neptune from the City of Asbury Park (the “**Boardwalk Gateway Feature**”), as required by the Redevelopment Plan, the design for which shall be subject to review and approval by the Township. The proposed Boardwalk Gateway Feature will be placed entirely on the Project Site at the northeast corner first facing pedestrians entering from the City of Asbury Park. At such time as the Boardwalk or the remaining portion of the Redevelopment Area described in the Redevelopment Plan is proposed to be developed, Redeveloper shall cooperate with the Township and the redeveloper of the remaining portion of the Redevelopment Area in the event that a different or additional Boardwalk feature be proposed to be implemented upon the Boardwalk.

8. Infrastructure Improvements: the construction of any improvement or utility necessitated, or required by the implementation of, and to serve, the Project, which is located on or off the Project Site or any portion thereof, including but not limited to electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines or other such utilities, which Infrastructure Improvements, if any, shall be provided underground and as otherwise set forth in applicable Governmental Approvals, and which plan is also subject to final utility connection coordination with each relevant utility provider (collectively, the “**Infrastructure Improvements**”). The Redeveloper shall design and construct or cause to be constructed the Infrastructure Improvements, in a good and workmanlike manner and in accordance with all applicable Legal Requirements, as that term is defined herein. Redeveloper shall provide performance and maintenance bonds, as may be required by the Municipal Land Use Law.

9. Sustainable Elements: inclusion of sustainable elements in the Buildings, including but not limited to the flood-proofing of the exterior of the Buildings in accordance and compliance with all applicable Legal Requirements, including but not limited to the Redevelopment Plan, and subject to review and approval of a specific Sustainability Plan which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval. Notwithstanding same, Redeveloper acknowledges that the Project shall be subject to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq. (CAFRA). Notwithstanding anything herein, the Redeveloper agrees that such Sustainability Plan shall include a green roof over the areas of the Parking Garage as shown on **Exhibit "R"** which are designed to have the ability to absorb and release stormwater slowly over a period of several hours following a rainfall event.

10. Streetscaping Plan: implementation of streetscaping upon, about and around the Project Site in accordance and compliance with all applicable Legal Requirements, including but not limited to the Redevelopment Plan, and subject to review and approval of a specific Streetscaping Plan which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval.

11. Landscaping Plan: implementation of landscaping upon, about and around the Project Site, including with regard to the Waterfront Promenade, in accordance and compliance with all applicable Legal Requirements, including but not limited to the Redevelopment Plan, and subject to review and approval of a specific Landscaping Plan which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval.

12. Signage Plan: implementation of signage upon, about and around the Project Site in accordance and compliance with all applicable Legal Requirements, including but not limited to

the Redevelopment Plan, and subject to review and approval of a specific Signage Plan which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval.

13. Lighting Plan: implementation of lighting upon, about and around the Project Site in accordance and compliance with all applicable Legal Requirements, including but not limited to the Redevelopment Plan, and subject to review and approval of a specific Lighting Plan which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval.

14. Security Plan: implementation of a security plan, to be prepared by Redeveloper in consultation with the Township's Police Department, setting forth those security measures to be implemented upon, about and around the Project Site in accordance and compliance with all applicable Legal Requirements, including but not limited to the Redevelopment Plan, which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval. Notwithstanding same, Redeveloper acknowledges and agrees that such Security Plan shall include the following features, all of which shall be subject to review and approval by the Planning Board and shall be implemented in coordination with the Township's Police Department as may be appropriate: two-way vehicular egress in the surface parking area; 2-way egress in the Parking Garage with emergency access on the west end; emergency access along the Waterfront Promenade; security lighting; security cameras; and security signage, some of which shall include 24-hour emergency access telephone numbers.

15. Stormwater Management Plan: Redeveloper shall implement stormwater management techniques upon the Project Site, as same may be approved or required by the Planning Board, all of which shall be for purposes of mitigating climate change impacts. As it

regards soil erosion and sediment control, Redeveloper shall implement such soil erosion measures upon the Project Site in accordance and compliance with applicable Legal Requirements, including but not limited to sediment barriers and silt fences, stabilized construction access, topsoil stockpiles and temporary and permanent stabilization, as further set forth in the Stormwater Management Report dated January 28, 2019 which has been submitted to the Township by Redeveloper, a copy of which is attached hereto as **Exhibit "N"**. Redeveloper shall implement such other soil erosion measures upon the Project Site as may be consistent with a Construction Mitigation Plan, which shall be submitted by Redeveloper to the Planning Board with its application for site plan approval. Additionally, Redeveloper shall promptly provide the Township with a copy of any Soil Erosion and Sediment Control Plan that has been certified by the Freehold Soil Conservation District.

16. Traffic Impact Study: the Parties acknowledge that Redeveloper has prepared an executive summary of the Traffic Impact Study, a copy of which is attached hereto as **Exhibit "O"**. Redeveloper shall implement any recommendations set forth in the Traffic Impact Study, as may be subject to review and approval by the Planning Board.

17. Open Public Space: the provision of those open public spaces generally depicted on the Open Public Space Plan, a copy of which is attached hereto as **Exhibit "G"**, which include the Waterfront Promenade, to be utilized and enjoyed by the public pursuant to the terms of a Public Access Easement Agreement and all Applicable Laws, including with regard to certain reasonable limitations therein, in substantially the form attached hereto as **Exhibit "K"**, which shall be executed by the Parties and held in escrow pursuant to the terms of the **Escrow Agreement** attached hereto as **Exhibit "S"** until the completion of the Project, and subsequently recorded by Redeveloper and promptly provided to the Township thereafter, all at no cost to the

Township. The Parties agree that the Public Access Easement Agreement shall be modified in order that a metes and bounds description for each of the Public Access Areas be attached thereto promptly upon the completion of the Project and prior to the issuance of the Certificate of Completion, subject to the adoption of requisite legislation by the Township Committee (collectively, these features upon the Project Site shall comprise the “**Public Access Areas**”); Redeveloper acknowledges and agrees that a Certificate of Completion for the Project shall not be issued unless and until such modification of the Public Access Easement Agreement has been completed. All Public Access Areas shall be kept in a safe, clean condition, free of trash and debris and regularly and appropriately maintained by Redeveloper, at no cost to the Township, and same shall be set forth in the Common Element Maintenance Plan. The Redeveloper acknowledges and agrees that the requirements hereunder to maintain the Public Access Areas in a safe, clean condition, free of trash and debris at no cost to the Township shall comprise covenants that shall run with the land and expressly survive the issuance of a Certificate of Completion.

18. Wesley Lake Retaining Wall Work: Redeveloper acknowledges that it is in receipt from the Township of previously approved plans for reconstruction of the Wesley Lake Retaining Wall, up to the Project Site boundary.

(i) Implementation of Wesley Lake Retaining Wall Work: Redeveloper shall undertake the reconstruction of the that section of the Wesley Lake Retaining Wall which lies between the Project Site boundary and Wesley Lake in accordance with the requirements set forth in the Redevelopment Plan and any Governmental Approvals, at no cost to the Township. The final Wesley Lake Retaining Wall Plans shall be submitted by the Redeveloper to and reviewed by the Township Engineer prior to submission for approval to the State Historic

Preservation Office (SHPO). The Wesley Lake Retaining Wall Plans, and the design set forth therein, shall emulate the previously approved engineering plans referenced herein (i.e. the existing portion of the Wesley Lake Retaining Wall immediately to the west). The Wesley Lake Retaining Wall Plans shall further be subject to the permitting requirements of the Township and any requisite approvals by the NJDEP, including with regard but not limited to the SHPO.

(ii) Condition of Certificate of Occupancy: Redeveloper expressly acknowledges and agrees that the Wesley Lake Retaining Wall Work is a material component of the Project and a Certificate of Occupancy for neither the Hotel nor any residential portion of the Project shall be issued unless and until the Wesley Lake Retaining Wall Work is fully completed and such work has been determined in writing by the Township Engineer to have been undertaken in accordance and compliance with all applicable Legal Requirements, Governmental Approvals, and the terms and conditions set forth herein, it being understood, however, that if the Wesley Lake Wall Work is substantially completed except for only (i) specific, minor finish or punch list items not interfering with the use of the Project, or (ii) particular elements of the Wesley Like Retaining Wall that cannot be completed at such time due to seasonal considerations, the Township shall issue its Certificate of Occupancy for the Hotel and/or such residential portion of the Project as sought by Redeveloper upon the posting of a bond, to the extent that the amount representing the fair value of the items or elements not yet completed is not covered by existing bonds or other such reasonably satisfactory security posted by the Redeveloper with the Township, with the amount of said fair value having been determined by the Township Engineer in her professional discretion, in order to secure Redeveloper's obligation to complete such items or elements after issuance of the requested Certificate of Occupancy. Upon the issuance of the Certificate of Completion for the Project, the Township

shall thereafter be responsible for the maintenance of that portion of the Wesley Lake Retaining Wall that shall have been reconstructed by Redeveloper. After the Effective Date and prior to the issuance of the Certificate of Completion, Redeveloper shall be responsible for the maintenance of said portion of the Wesley Lake Retaining Wall.

(iii) Access: In order to undertake the Wesley Lake Retaining Wall Work, the Township shall provide Redeveloper with temporary access to, about and around that portion of the Wesley Lake Retaining Wall which requires reconstruction pursuant to the terms and conditions set forth in **Section 2.1(18)** hereof.

(iv) Wesley Lake Retaining Wall Estimate: The Parties acknowledge that the approximate estimate for the Wesley Lake Retaining Wall Work is **\$829,950.00**, which estimate reflects the current prevailing wage rate, as set forth in **Exhibit "T"** ("**Wesley Lake Retaining Wall Estimate**"). Redeveloper shall be entitled to reimbursement of 18.7% the costs actually incurred by Redeveloper in connection with the Wesley Lake Retaining Wall Work, as further set forth in **Section 12.7** herein.

19. Municipal Parking Lot: The Township Engineer has prepared a plan for certain modifications to be undertaken to the Municipal Parking Lot in order to develop an improved arrangement for pedestrians as well as for vehicle and truck traffic traversing and/or parking ("**Municipal Parking Lot Plan**"), a copy of which is attached hereto as **Exhibit "U"**. The Township Engineer will present the Municipal Parking Lot Plan to the Township Planning Board for review and recommendations pursuant to N.J.S.A. 40:55D-31 prior to the Redeveloper's presentation of its Site Plan application to the Planning Board, if same has not already been completed by such time.

(i) Implementation of the Municipal Parking Lot Plan: Redeveloper agrees to make, at no cost to the Township, the improvements as shown on the Municipal Parking Lot Plan during the course of its construction of the Project and same shall be fully constructed and implemented prior to the Township's issuance of any Certificate of Occupancy for the Hotel. The Redeveloper shall be responsible to diligently apply for and secure any additional Governmental Approvals that may be required for the implementation of the Municipal Parking Lot Plan.

(ii) Access: In order to undertake the implementation of the Municipal Parking Lot Plan, the Township shall provide Redeveloper with temporary access to, about and around the Municipal Parking Lot pursuant to the terms and conditions set forth in **Section 2.1(19)** hereof.

(iii) Municipal Parking Lot Estimate: The Parties acknowledge that the approximate estimate for the implementation of the Municipal Parking Lot Plan is **\$180,900.00**, which estimate reflects the current prevailing wage rate, as set forth in **Exhibit "V"** ("**Municipal Parking Lot Estimate**"). Redeveloper shall be entitled to reimbursement of 18.7% the costs actually incurred by Redeveloper in connection with the Municipal Parking Lot, as further set forth in **Section 12.7** herein.

20. Temporary Access Granted to Redeveloper: The Township shall permit the Redeveloper to access: (i) that portion of the Wesley Lake Retaining Wall that is reflected in the Wesley Lake Retaining Wall Plans and (ii) the Municipal Parking Lot, and thereabouts, in order to undertake and implement the Wesley Lake Retaining Wall Plans and the Municipal Parking Lot Plan (collectively, the "**Access Work**"), respectively, but only as may be necessary and appropriate in order to complete same and for such other limited purposes as may be related

thereto, subject to the terms and conditions herein. Redeveloper and the Township shall cooperate with each other with regard to the Township's provision of access and the Redeveloper's compliance with the terms set forth in this Paragraph.

a) Term: The access granted to Redeveloper herein shall automatically expire, without any additional action being taken by the Township, upon the completion of all of the Access Work; provided however, that upon the completion of the Wesley Lake Retaining Wall Work, Redeveloper shall not exercise any access rights hereunder with regard to the Wesley Lake Retaining Wall unless requested in writing and demonstrating good cause for same and granted in writing by the Township Engineer. In any event, the access granted hereunder shall automatically expire on issuance of a Certificate of Completion.

b) Representations: The Township makes no representations or warranties concerning either or both of the Access Areas for the purposes of the right of entry to be exercised by Redeveloper hereunder. Redeveloper agrees that Redeveloper and its agents shall enter upon each of the Access Areas in their "As Is, Where Is" condition at the time of each entry at their own risk.

c) Notice: Redeveloper shall provide the Township with written notice at least five (5) business days in advance of any planned entry upon either of the Access Areas together with a brief description of the work to be undertaken during the planned entry and the locations of any proposed work, for the Township's consideration and comment. The Township and its agents shall avoid any unreasonable interference with any activities being conducted upon either of the Access Areas by the Redeveloper, except in the event of an emergency, as same is determined in the Township's reasonable discretion. Under no circumstances shall Redeveloper permit any liens or other encumbrances to be recorded or entered with respect to either of the

Access Areas arising out of the access granted herein. For purposes of this paragraph only, notice may be provided by email to the Township Engineer with a copy to the Township's Business Administrator.

d) Restoration: Redeveloper shall, at its sole cost and expense, cause any areas outside of the Access Areas which are impacted or affected by the access granted herein to be restored and repaired in a timely manner to substantially the same condition as existed at the time of each entry. Redeveloper shall be responsible for properly disposing of any waste that may be generated upon the Access Areas as a result of its work thereon, at its sole cost. Additionally, Redeveloper shall not permit any equipment to remain on or about the Access Areas for any prolonged period of time and all such related equipment shall be promptly removed upon the completion of any particular scope of work being undertaken upon the Access Areas by Redeveloper.

e) Insurance: Redeveloper shall provide insurance coverage covering the access permitted herein and the Access Areas, as set forth in **Section 13.3**.

SECTION 2.2 Governmental Approvals. The Redeveloper shall use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals required for any of the work referenced herein and shall carry out the Project and all components thereof in conformance therewith. The Redeveloper shall have the right, but not the obligation, to appeal a denial or unfavorable ruling as to any Governmental Approval, or any unsatisfactory condition, or to defend an appeal, in Redeveloper's sole discretion, of any Governmental Approval. As to any approval of the Project by the Planning Board, in the event such approval is overturned on appeal, the Redeveloper shall have the right, but not the obligation, to reapply to the Planning Board with such modifications as are required to obtain approval, subject to the provisions

herein. The Township shall fully cooperate with Redeveloper in obtaining all Governmental Approvals.

SECTION 2.3 Approval by Township Engineer of Preliminary and Final Site Plan

Applications. The Redeveloper shall diligently prepare and submit to the Planning Board complete applications, as applicable, for preliminary and/or final site plan approval, prepared by a State of New Jersey licensed architect, surveyor and/or engineer for the development and construction of the Project. The Redeveloper has submitted to the Neptune Township Redevelopment Committee a copy of its proposed plans. The Neptune Township Redevelopment Committee has determined the plans submitted and referenced in this Redevelopment Agreement comply in all material respects to the Redevelopment Plan, the Project Description and the terms herein. Simultaneously with the Redeveloper's submission to the Planning Board of any application for preliminary and/or final site plan approval, including with regard to any amendment to any approved preliminary and/or final site plan approval, the Redeveloper shall submit a copy of said application together with a set of any updated Site Plans to the Township Engineer for a determination that the application complies in all material respects with the Project Description and the terms herein and the Redevelopment Plan, which determination shall be made within ten (10) days of the Township Engineer's receipt of the application (the "**Consistency Determination Review Period**").

Redeveloper acknowledges and agrees that final site plans submitted to Planning Board shall comply with the Redevelopment Plan and the terms of this Agreement, including with regard to the Exhibits attached hereto and incorporated by reference. If the Township Engineer determines that the application does not comply, then the Township Engineer shall notify Redeveloper within five (5) days of the expiration of the Consistency Determination Review

Period in reasonable detail of the changes required for the final site plans to so conform in all material respects and any aspect of the application not set forth in the Township Engineer's notice as being non-compliant shall be conclusively deemed to be in compliance.

SECTION 2.4 Existing Utilities. The Redeveloper acknowledges that local public utility providers may have certain rights with respect to the Project Site and may own certain facilities that are currently located thereupon. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and easements therefore, in order to complete the Project, provided that the Township shall furnish any appropriate order to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10. Notwithstanding same, the Township shall use its best efforts to cooperate with and assist the Redeveloper in its efforts to achieve positive results with regard to the local public utilities. Any reasonable costs incurred by the Township in connection with same shall be deemed a Township Cost, as that term is defined herein. The Redeveloper shall consult local public utility providers with respect to all site work, preparation and construction, and shall take all precautions to prevent personal injury, property damage and other liabilities related to any utilities above, at, or under the Project Site.

As a component of its Site Plan application, the Redeveloper shall submit to the Planning Board for approval, drawings, plans and/or renderings that sufficiently depict all reasonably necessary Infrastructure Improvements. In preparation for the above-described submission, the Redeveloper will have assessed those Existing Utilities that are presently providing utilities services to the Project Site, if any, and obtained "will serve" letters from the relevant utility providers stating that the applicable utility will provide service to the Project. The Redeveloper shall make such repairs, replacements, extensions or upgrades, if any, as are deemed reasonably

necessary by its professional consultants solely to supply utility service to the Project, in consultation with the relevant local public utility providers and the Township Engineer. The Redeveloper shall assume and pay the cost for any increase in the size or scope of any Existing Utilities and ancillary facilities that are necessary solely to supply utility service to the Project or any component thereof. The obligation of the Redeveloper for the cost of the construction and implementation of the Infrastructure Improvements and any repairs, replacements, extensions or upgrades necessary to any Existing Utilities, all of which shall be located underground, to provide utility service to the Project shall not be capped, and the Redeveloper may not seek contribution for the payment of same from the beneficiaries or alleged beneficiaries of same.

SECTION 2.5 Intentionally Deleted.

SECTION 2.6 Condition of Project Site.

To the extent that Redeveloper is in control of the Project Site, Redeveloper shall, at its sole cost and expense, be responsible for the good care of the Project Site and the maintenance of same in a good, safe condition and in substantial order, and shall not cause or suffer any waste with respect thereto and shall promptly, at the Redeveloper's sole cost and expense, make all necessary repairs and replacements to the Project and any Infrastructure Improvements thereupon, including with regard to the Public Access Areas.

SECTION 2.7 Neighborhood Impacts. The Redeveloper and the Township acknowledge that the construction and implementation of the Project may have certain impacts on the community surrounding and in the vicinity of the Project. Although it is anticipated that the Project will provide many positive effects on the community, it is also recognized that the construction and implementation of the Project may result in some temporary inconveniences during the time that development and construction takes place. As such, the Redeveloper shall

make reasonable efforts to minimize any negative impacts, including noise, vibration, rodents and odors, and any other temporary inconveniences caused by or related to the construction of the Project and shall adhere to an approved Construction Mitigation Plan, which shall be submitted to the Planning Board for consideration, and which shall include at least the following mitigation techniques: (i) construction of fencing around the perimeter of the Project Site, including north side along Wesley Lake, prior to the commencement of any construction activities, which fencing shall be a minimum of six (6) feet high with fabric screening and a locking gate, to which the Township Engineer and her designee(s) shall have reasonable access; (ii) Port A Johns shall be located on-site as far away from any surrounding residential properties residents as reasonably possible; (iii) written details regarding the fencing referenced herein and any other screening to be implemented during construction shall be submitted to the Township Engineer for review and approval prior to the commencement of any construction activities; (iv) written details regarding the shoring up of adjacent roadways during construction of the Parking Garage shall be submitted to the Township Engineer for review and approval prior to the commencement of any construction activities; (v) pre-construction photos and video of the conditions within and around the Project Site shall be submitted to the Township Engineer prior to the commencement of any construction activities; (vi) pre-construction video of sanitary and drainage sewers that are being connected shall be submitted to the Township Engineer prior to the commencement of any substantial construction activities; and (v) under no circumstances may any construction work be undertaken upon the Project on Sundays.

In addition to the foregoing, if at any time during construction, dewatering of the Project Site or any portion thereof becomes necessary or appropriate, the Redeveloper shall submit to the Township Engineer for review and written approval, a written dewatering plan. Submission and

approval of any such dewatering plan shall not be a precondition in emergency cases (i.e. those involving, by way of example only and not intended to be limited to, an unanticipated and unseasonably characteristic high rain fall amount or an overflow or outflow for any reason from Wesley Lake, in which event, Redeveloper shall promptly notify the Township Engineer of the circumstances and the actions then undertaken by Redeveloper).

The Redeveloper expressly acknowledges and agrees that any construction activities associated with the Project shall be conducted in full compliance with all applicable Ordinances of the Township of Neptune then existing and any other applicable Legal Requirements, all of which are fully incorporated herein by reference.

Redeveloper expressly acknowledges and agrees that the Construction Mitigation Plan that is approved by the Planning Board shall not be materially modified without formal approval of the Township, which shall be by Resolution of the Township Committee and further, under no circumstances may any construction work be undertaken upon the Project on Sundays.

SECTION 2.8 Traffic Management During Construction.

1. Minimization of Traffic Effects. The Redeveloper and the Township agree that the direction, flow and amount of traffic in and around the Project Site are issues to be addressed during the construction of the Project, as well as after its completion, and shall be as required by the Planning Board, including with regard to any determination that Redeveloper shall implement any recommendations set forth in the Traffic Impact Study. The Redeveloper shall exert reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods and traffic management shall be implemented consistently. The Redeveloper shall conduct its operations in such manner as to provide safety for the public and all employees upon the Project Site as well as the surrounding properties. When appropriate or as may be

required by the Planning Board, the Redeveloper shall provide suitable bridges, barricades, railings, or other protection about open trenches or excavations and any necessary traffic directors, detour signs, lights and signals for any obstruction to traffic. All costs related to traffic management and any diversion of any traffic during construction which are directly related to the Project shall be the sole the responsibility of the Redeveloper.

2. Roadway Repairs. The Redeveloper shall take all measures as may be required by the Planning Board to ensure that any improvements on the perimeter of the Project Site, including roadways that are adjacent to the Project Site, shall not be disturbed or damaged. To the extent that any streets or portions of streets become damaged as a result of the construction or implementation of the Project, Redeveloper shall repave as may be required by the Planning Board.

SECTION 2.9 First Source Employment. The Redeveloper shall make good faith efforts to first employ, and to cause its contractors and subcontractors to employ, residents of the Township in connection with the construction, implementation and operation of the Project, including with regard to the operation of the Hotel to the extent that same is within Redeveloper's control, subject to union rules and requirements (if any) and any other applicable Legal Requirements.

SECTION 2.10 Prevailing Wages. Only to the extent required by law, and if applicable, the Redeveloper shall pay all workers or employees employed in connection with the construction and completion of the "public work" (as such term is defined in N.J.S.A. 34:11-56.26) portion of the Project (if any), not less than the prevailing rates of wages, as provided in the Legal Requirements applicable to the Township's public work contracts, including, without limitation, N.J.S.A. 34:11-56.25, et seq. The Redeveloper shall ensure that all Project

Agreements, if applicable, contain appropriate language to effectuate this provision. The Redeveloper hereby covenants to enforce its Project Agreements if any party thereto is not in compliance with this provision.

SECTION 2.11 Project Schedule. Redeveloper shall diligently make a good faith effort to construct and implement the Project substantially in accordance with the timeframes set forth in the Project Schedule attached hereto as **Exhibit "I"**, which timeframes have been determined by the Township as reasonable. Redeveloper shall diligently prepare and submit applications to any Governmental Bodies, as applicable, for any Governmental Approvals that are required for and relate to the construction of the Project, within ninety (90) days after the Effective Date. Approvals from said Governmental Bodies shall be diligently pursued and each approval shall be obtained by Redeveloper no later than two hundred and seventy (270) days from the date of the submission of said applications, which timeframe may be reasonably extended by the Township Engineer in her discretion, so long as Redeveloper is pursuing the approvals described above diligently. Construction activities shall be commenced within fourteen (14) months of Redeveloper's receipt of Governmental Approvals, and the Project shall be completed within five (5) years from the commencement of construction activities. Any material failure of Redeveloper to adhere to the Project Schedule shall otherwise be subject to the Notice of Default provisions herein which the Parties acknowledge permit the Redeveloper an opportunity to cure.

The Redeveloper and the Township shall not willfully suspend or discontinue its respective performances of its obligations under this Agreement (other than in the manner provided for herein) for any reason other than an event of Force Majeure or other Tolling Event. Any suspension or discontinuance of the Redeveloper's performance of its obligations under this

Agreement shall only be valid to the extent and for the period of time that such performance is substantially limited or prevented as a proximate result of such occurrence.

SECTION 2.12 Certificates of Occupancy. Promptly upon completion of the construction of each of the Buildings, and in accordance with the Governmental Approvals, the Redevelopment Plan, and this Agreement, the Redeveloper shall apply for and diligently pursue a Certificate of Occupancy from the Township for each Condominium Unit, as required by Applicable Law, at the time each Condominium Unit is completed.

SECTION 2.13 Certificate of Completion. Redeveloper hereby expressly acknowledges and agrees that a Certificate of Completion for the Project shall not be issued unless and until each aspect of the Project is fully completed (or bonded in accordance with the provisions of this Section). Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the Project Site was determined to be an area in need of redevelopment shall be deemed to no longer exist. The Township shall not unreasonably withhold or delay the delivery of the Certificate of Completion. If the Township, in its reasonable discretion, determines that the Redeveloper is not entitled to a Certificate of Completion, the Township shall, at the written request of the Redeveloper, provide the Redeveloper with a written statement of the reasons the Township refused or failed to furnish a Certificate of Completion. If the reason for the refusal is confined to (i) the immediate availability of specific, minor finish or "punchlist" items not interfering with the use of the Project, or (ii) completion of certain elements, such as landscaping or paving, that reasonably cannot be completed at such time due to seasonal considerations, the Township shall issue its Certificate of Completion upon the posting of a bond to the extent not covered by existing bonds (or other reasonably satisfactory security) by the Redeveloper with the Township in an amount

representing the fair value of the items not yet completed, as determined by the Township Engineer, to secure Redeveloper's obligation to complete such items after issuance of the Certificate of Completion.

SECTION 2.14 Cooperation. The Parties shall fully cooperate with each other as necessary or appropriate to complete and implement the Project, including with regard to the good faith negotiation of any additional agreements that may be required in order to effectuate the goals and objectives of this Agreement, provided however, that such actions shall not result in a material increase in the Parties' respective obligations hereunder or a material decrease in the Parties' respective rights hereunder.

SECTION 2.15 Term. This Agreement shall become effective upon the Effective Date, subject to any Conditions Precedent set forth herein, and shall remain in full force and effect from such date until the Project has been completed and implemented, as evidenced by the issuance of a Certificate of Completion for the Project, in accordance with the terms of this Agreement, the Redevelopment Plan and the final site plan and any other Governmental Approvals.

Section 2.16 Public Notice. As further set forth in the Redevelopment Plan, Redeveloper shall provide enhanced public notice for any application associated with the construction of the Project. Redeveloper shall be responsible for providing public notice of same to all property owners within 200' of any portion of the Project Site boundary as well as have such notice published in the official newspaper and also posted upon the Project Site and upon at least two (2) other nearby public locations within Ocean Grove, all of which shall be at no cost to the Township.

Section 2.17 Order of Construction Activities. As further set forth herein, Redeveloper shall comply with the Construction Mitigation Plan, attached as **Exhibit "D"**, and the phasing sheet incorporated therein as well as the Project Schedule. Specifically, Redeveloper shall undertake the following construction activities in the order set forth below:

1. Commencement of Redeveloper's Remediation, if any; Excavation of the majority of the Project Site, running of utilities and construction of the Parking Garage; and Reconstruction of the Wesley Lake Retaining Wall;

2. Construction of the Waterfront Promenade; Hotel (including the Pedestrian Plaza, which shall be improved with permanent seating and lighting fixtures, as set forth in the Redevelopment Plan); Retail Building; Condominiums; and Single Family Homes and modification of the Existing Parking Area;

3. Construction of the remainder of the Project, including but not limited to the completion of utility work and site work and implementation of the Streetscaping Plan, Landscaping Plan, Signage Plan, and the Municipal Parking Lot Plan.

Notwithstanding anything to the contrary elsewhere in this Agreement, the Parties acknowledge that the Township shall issue Certificates of Occupancy in the customary performance of its obligations provided, however, that until construction of the Hotel is fully completed, the Township would not be obligated to issue more than thirty-three (33) Certificates of Occupancy for the Condominiums and Single Family Homes collectively (that figure being 66.67% percent of the aggregate number of Condominiums and Single Family Homes).

ARTICLE III

AFFORDABLE HOUSING AND DEVELOPMENT FEES

SECTION 3.1 Affordable Housing and Development Fees. The Project is not required to include the construction or provision of affordable housing, however, pursuant to the Township's Development Fee Ordinance, Redeveloper shall be required to pay mandatory Development Fees as authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq. More specifically, Redeveloper shall make a lump sum payment to the Township in the amount of 1.5% of the equalized assessed value of any residential components of the Project and 2.5% of the equalized assessed value of any commercial components of the Project. Such payments shall be made in accordance with the procedures set forth in the Development Fee Ordinance and the New Jersey Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55d-8.1, et seq., as amended and, with respect to individual Units, no later than upon the issuance of the Certificate of Occupancy for such Unit.

ARTICLE IV

INTENTIONALLY DELETED

ARTICLE V

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 5.1 Representations and Warranties by Redeveloper.

The Redeveloper hereby represents and warrants the following to the Township, for the purpose of inducing the Township to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

1. Authorized to Conduct Business in the State of New Jersey. The Redeveloper is a limited liability company of the State of New Jersey, authorized and qualified to do business in the State of New Jersey and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

2. Authority to Enter into Agreement. The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

3. Binding Upon Redeveloper. This Agreement is duly executed by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

4. No Pending or Threatened Litigation. To the best of the Redeveloper's knowledge, there is no pending or threatened litigation, suit, proceeding, or investigation that would prevent the Redeveloper from performing its duties and obligations hereunder or have a material adverse effect on the financial condition of the Redeveloper or its members. The Redeveloper shall notify the Township of any and all litigation that could potentially prevent the Redeveloper from performing its duties and obligations hereunder.

5. Materials and Documentation Submitted to the Township. To the best of the Redeveloper's knowledge, all materials and documentation submitted by the Redeveloper and its agents to the Township and its agents were, at the time of such submission, and, unless modified,

replaced or superseded by documents or written communications subsequently submitted by Redeveloper and its agents to the Township, as of the Effective Date of this Agreement, materially accurate, and the Redeveloper shall continue to inform the Township of any material changes in the documentation submitted, including with regard to any updated or new environmental reporting that is generated following the Effective Date of this Agreement.

6. Sworn Statement. The Redeveloper shall, at such times as the Township may request, furnish the Township with a complete statement sworn and subscribed to by the Managing Member of the Redeveloper identifying all persons holding ownership interests, equitable interests or beneficial interests in the Redeveloper to the extent that such interest exceeds ten (10%) percent and the extent of their respective holdings, pursuant to N.J.S.A. 40:55D - 48.1.

SECTION 5.2 Representations and Warranties by the Township.

The Township hereby represents and warrants the following to the Redeveloper to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

1. Authority to Enter into Agreement. The Township has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

2. Binding Upon the Township. This Agreement is duly executed by the Township and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of Legal Requirements presently in effect.

3. No Pending or Threatened Litigation. Except as disclosed in writing, there is no pending, or to the best of the Township's knowledge, threatened litigation, suit, proceeding, or investigation that would prevent the Township from performing its duties and obligations hereunder. The Township shall notify the Redeveloper of any and all litigation that may prevent the Township from performing its duties and obligations hereunder.

4. Adoption of Ordinances and Resolution. That the Ordinance adopting the Redevelopment Plan and designating the Redevelopment Areas, and the Resolution conditionally designating the Redeveloper to serve as the Redeveloper of the Project Site were duly adopted by the Governing Body in accordance with the Redevelopment Law and any other Legal Requirements, subject to any such ruling as may be issued by a court of competent jurisdiction.

5. No Other Redevelopment Agreements. No other Redevelopment Agreements are in effect with respect to the Project Site.

ARTICLE VI

ACKNOWLEDGMENT OF RECEIPT OF COLLATERAL DOCUMENTS

SECTION 6.1 Delivery of Collateral Documents. The Redeveloper and the Township agree that the rights, obligation and liabilities of the Parties under this Agreement are conditioned upon the delivery of the executed collateral documents referred to in this **Article VI** and hereby acknowledge the receipt of such documents, simultaneously with the execution of this Agreement.

SECTION 6.2 Documents Delivered by Redeveloper. The following documents shall be delivered by Redeveloper to the Township by or upon the Effective Date:

1. Certificates of Redeveloper. The following Certificates: (i) a Certificate of the Managing Member of the Redeveloper, to the effect that, to the best of his or her knowledge,

each of the representations of the Redeveloper which are set forth in **Section 5.1** hereof are true and correct as of the Effective Date of this Agreement; (ii) a certified copy of the Certificate of Formation; (iii) Certification of Good Standing for each legal entity comprising Redeveloper.

2. Project Team. A list of the names addresses and phone numbers of all individuals who comprise the Redeveloper's Project Team is set forth on **Exhibit "J"**. The Redeveloper shall provide written notice to the Township of any changes in the individuals who will comprise the Project Team.

3. Statement of Payment: Additionally, Redeveloper shall have reimbursed the Township in full for any outstanding Township Costs, as that term is defined in the Conditional Designation Agreement, due and owing to the Township pursuant to the Conditional Designation Agreement.

4. Financing Plan: An anticipated financing plan which shall list the sources and amounts reasonably anticipated by the Redeveloper to comprise, in the aggregate, the requisite funds for the completion of the Project.

SECTION 6.3. Documents Delivered By the Township. The following documents shall be delivered by the Township to the Redeveloper by or upon the Effective Date:

1. Statement by the Township: A statement by a duly authorized representative of the Township to the effect that each of the representations of the Township set forth in **Section 5.2** herein are true and correct as of the date of this Agreement.

2. Township Project Team. A list of the names addresses and phone numbers of all individuals who comprise the Township's Project Team for purposes of this Agreement is set forth on **Exhibit "X"**.

ARTICLE VII

REDEVELOPER AND TOWNSHIP COVENANTS and

REDEVELOPER'S DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS

SECTION 7.1 Redeveloper Covenants.

1. Covenants That Shall Terminate Upon Certificate of Completion. The following covenants shall automatically terminate upon the Township's issuance of a Certificate of Completion, as further set forth herein:

(a) Completion of Project in Accordance with Agreement and Applicable Legal Requirements. The Redeveloper shall use commercially reasonable efforts to complete the Project in accordance with the provisions of this Agreement and all applicable Legal Requirements, including, but not limited to, the Act, all Governmental Approvals and all applicable Environmental Laws, as those terms are defined herein, at no cost to the Township. Such obligation shall include, but not limited to, the Redeveloper using commercially reasonable efforts to ensure that all consultants, professionals, employees, agents, and contractors engaged by the Redeveloper or any subcontractor of any of the Redeveloper's contractors possess the skill and judgment necessary to construct and implement the Project in accordance and compliance with the terms and conditions of this Agreement and the Redevelopment Plan, consistent with the high level of skill and care necessary so that the Project, and all components thereof, upon completion, satisfies the design, materials and quality requirements of this Agreement and all applicable Governmental Approvals and Legal Requirements. Nothing herein shall prevent Redeveloper from retaining a qualified construction firm to oversee construction of the Project.

b) Tasks by Redeveloper. Subject to the terms herein, the Redeveloper shall diligently undertake the following tasks for the completion and implementation of the Project with commercially reasonable due diligence: (i) financing of the Project; (ii) development and construction of the Project; and (iii) commencement and completion of construction on or prior to the dates set forth in the Project Schedule, which the Township has fixed as reasonable, except as may be otherwise provided in this Agreement.

c) Modification of Project Description. In the event the Redeveloper wishes to materially modify the Project Description, the Redeveloper shall obtain the Township Committee's approval prior to the implementation of such modification or any portion thereof, which approval shall be by formal Resolution or legislation, as may be applicable, of the Township Committee.

d) Utilization of Project Site as Collateral. The Redeveloper shall not utilize the Project Site or any portion thereof as collateral for any activity unrelated to this Project; provided however, that nothing herein shall be deemed to prevent Redeveloper from closing on its construction and permanent mortgage financing, as may be applicable.

e) Utilization of Project Site to be Consistent with Redevelopment Plan. The Redeveloper shall not utilize any portion of the Project Site in a manner that is not consistent with the Redevelopment Plan and this Agreement.

f) Purpose of the Redevelopment not for Speculation. The Redeveloper covenants and acknowledges that its undertakings pursuant to this Agreement shall be for the purpose of the redevelopment of the Project Site and not for speculation in land holding.

g) Prior Written Consent of Township. In addition to any other provisions herein requiring the Redeveloper to obtain prior written approval of the Township, the

Redeveloper shall not, without the prior written consent of the Township, which consent shall not be unreasonably withheld, conditioned or delayed: (i) effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper; or (ii) assign or attempt to assign this Agreement or any rights herein or in the Project or any portion of the Project Site. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit, and the Township's prior approval shall not be required for, Permitted Transfers, as that term is defined herein or for Redeveloper's engagement of a third-party operator for the Hotel. For purposes of this paragraph, the Township's withholding of consent shall be considered unreasonably withheld, conditioned and/or delayed if the proposed transferee or assignee is at least comparable to MB1 in financial capacity, real estate development experience and reputation.

h) Sale, Conveyance, or Transfer. The Redeveloper further represents and agrees for itself and its successors and assigns that to perform its obligations with respect to completing the Project or to operate and maintain any portion of the Project, or to perform any other obligation under this Agreement or any other purpose authorized by this Agreement, the Redeveloper has not made or created, and that it will not make or create, prior to the issuance of the Certificate of Completion, or suffer to be made or created, any sale, conveyance or transfer of the Project Site or the Project or any portion thereof, or this Agreement, without the prior written approval of the Township, excluding Permitted Transfers, as that term is defined herein, which consent shall not be unreasonably withheld, conditioned or delayed, provided that the Township's withholding of approval shall be considered unreasonably withheld, conditioned and/or delayed if the proposed transferee or assignee is at least comparable to MB1 in financial capacity, real estate development experience and reputation. The Parties acknowledge and agree, however, that this provision shall not apply to the sale and conveyance of any Condominium

Units to any individuals within the condominiums that are proposed to be formed, including with regard to the Single Family Homes.

2. Covenants That Shall Expressly Survive Certificate of Completion. The following covenants shall expressly survive the Township's issuance of a Certificate of Completion and shall run with the land that will comprise the Project Site in perpetuity, as further set forth herein and in the Redeveloper's Declaration, thereby binding successors in interest:

a) Prohibition of Discrimination. The Redeveloper shall not discriminate against any person or group of persons, on account of race, color, religious principles, creed, nationality, ancestry, familial status, disability, marital status, sex, affectional or sexual orientation or gender identity or expression in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project or any portion thereof, nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sublessees, or vendees, as applicable.

b) Maintenance of the Public Access Areas: The Redeveloper covenants and acknowledges that its obligations to diligently and fully maintain all of the Public Access Areas within the Project Site, at no cost to the Township, in accordance with the terms herein and those set forth in the Public Access Easement Agreement, shall comprise a covenant that shall run with the Project Site until the assumption of said maintenance obligation by the Condominium Association as same shall be recorded in the Condominium's Master Deed. Thereafter, the Redeveloper's maintenance obligations and any other such obligations of Redeveloper's pursuant to the Public Access Easement Agreement shall automatically terminate. A copy of the

recorded Condominium Master Deed, which Redeveloper shall cause to expressly reflect the assumption of said maintenance obligations and other such obligations as set forth in the Public Access Easement Agreement, shall be promptly provided to the Township at no cost to the Township. Redeveloper acknowledges and agrees that a Certificate of Completion for the Project shall not be issued unless and until such recorded Condominium Master Deed is provided to the Township.

SECTION 7.2 Redeveloper Declaration of Covenants, Conditions and Restrictions.

As further set forth herein, the Redeveloper shall execute and record a Redeveloper Declaration of Covenants, Conditions and Restrictions Regarding Redevelopment Agreement (“**Redeveloper Declaration**”) in the form substantially attached hereto as **Exhibit “L”** and imposing upon the Project Site the covenants, conditions and restrictions contained herein relating to Permitted Transfers, and as set forth in **Article 11**, all as may be limited by the rights of a Holder, as that term is defined herein, granted hereunder and other such provisions which shall run with the land. A recorded copy of the Redeveloper’s Declaration shall be promptly provided to the Township at no cost to the Township.

SECTION 7.3 Effect and Duration of Redeveloper Covenants. It is intended and agreed, that the Redeveloper’s covenants set forth herein shall comprise covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project Site. It is further intended and agreed that the Redeveloper’s covenants

set forth herein shall remain in effect until the issuance of a Certificate of Completion by the Township, at which time such covenants of Redeveloper shall automatically and without further action cease and terminate, except as may be otherwise expressly set forth: (i) in this Agreement and/or (ii) in N.J.S.A. 40A:12A-9 of the Act, as may be amended; and the conditions determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed no longer to exist and the lands and improvements thereon shall no longer be subject to eminent domain as a result of those determinations, and further provided that if requested by either Party after the issuance of the Certificate of Completion, the Parties shall cooperate to discharge those portions of the Redeveloper's Declaration of record that are intended to terminate upon the issuance of a Certificate of Completion.

In amplification, and not in restriction, of the provisions of this **Article 7**, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Agreement, both for and in their own right but also for the purposes of protecting the interests of the community at large. Such agreements and covenants shall run in favor of the Township until the issuance of a Certificate of Completion for the Project. The Township shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other such proceedings to enforce the curing of any breach of this Agreement or covenant, to which it may be entitled, pursuant to the provisions herein.

SECTION 7.4 Township Covenants. The Township hereby covenants and agrees as follows:

1. Cooperation. The Township agrees to reasonably cooperate with the Redeveloper's efforts to complete and submit any necessary Governmental Application(s) and

with Redeveloper's efforts to obtain any of the necessary Governmental Approval(s), provided that the Redeveloper is otherwise diligently pursuing said Governmental Approval(s).

2. Township to Provide Documentation. The Township shall provide the Redeveloper with any documents, reports, information, studies or other items in its possession that pertain to any of the parcels of property contained within the Project Site or contain relevant information material to the Redeveloper's decision to proceed with the Project and the Redeveloper is materially adversely affected by said information.

ARTICLE VIII

CONDITIONS PRECEDENT

SECTION 8.1 Conditions Precedent. The Township and Redeveloper shall proceed diligently and in good faith to satisfy the following Conditions Precedent and each shall cooperate with the other in connection therewith, and while the Parties are seeking to satisfy the Conditions Precedent, the Parties shall continue to perform their respective obligations under this Agreement. In the event of a failure of any Condition Precedent, either Party may terminate this Agreement by written notice to the other and neither party shall have any further right or obligation under this Agreement, except as may be otherwise expressly provided herein, and further provided, that if the failure of a condition results from a default by either Party, then the non-defaulting party shall have such rights as are provided by this Agreement in the event of an Event of Default by the other party.

1. Conditions Precedent to the Township's Obligations: The Township and Redeveloper hereby acknowledge and agree that the Township's obligations herein are contingent upon the satisfaction of the following Conditions Precedent:

a) Statement of Payment: Any and all outstanding monies that are due and owing to the Township pursuant to the Conditional Designation Agreement have been paid in full.

b) Financing Plan: Provision to the Township of an anticipated financing plan as set forth herein which the Township shall not seek to alter or revise in any way, it being understood that the Redeveloper may, at any time and from time to time, modify the Financing Plan, in which case, Redeveloper shall submit to the Township written notice of any such changes to the Financing Plan.

c) Redeveloper's Declaration of Covenants, Conditions and Restrictions: Execution and recording by Redeveloper of the Redeveloper's Declaration, as further set forth in **Section 7.1**, which such Redeveloper's Declaration the Parties acknowledge also applies to any of Redeveloper's successors and assigns.

d) Governmental Approvals: Redeveloper shall have secured all final and non-appealable Governmental Approvals necessary or otherwise desired by Redeveloper, on terms and conditions satisfactory to Redeveloper, in Redeveloper's sole and absolute discretion (collectively, the "**Conditions Precedent**").

e) Public Access Easement Agreement: Execution and recording by Redeveloper of the Public Access Easement Agreement, as further set forth in **Section 2.1 (17)**, which such Public Access Easement Agreement the Parties acknowledge also applies to any of Redeveloper's successors and assigns, as specifically set forth therein.

2. Conditions Precedent to the Redeveloper's Obligations: The Township and Redeveloper hereby acknowledge and agree that the Redeveloper's obligations herein to

commence construction in accordance with the Project Schedule are contingent upon the following:

a) Financing: Redeveloper shall have obtained one or more commitments from one or more lenders, as may be applicable, in the amounts reasonably anticipated by the Redeveloper to comprise, in the aggregate, the requisite funds for the completion of the Project.

b) Closing: Redeveloper's exercise of the Option Agreement and closing on the Ground Lease Agreement, thereby providing Redeveloper with site control; and

c) Governmental Approvals: Redeveloper's acquisition of all final and non-appealable Governmental Approvals necessary or otherwise desired by Redeveloper, on terms and conditions that are satisfactory to Redeveloper.

3. Condition Precedent to Township's Issuance of a Certificate of Occupancy: The Township and Redeveloper hereby acknowledge and agree that the Township's obligation to issue any Certificate of Occupancy is contingent upon, *inter alia*, the Redeveloper's completion of the Wesley Lake Retaining Wall Work or submission of a bond as specifically provided in **Article I, Section 2.1(17)** and otherwise in accordance with the terms herein.

4. Conditions Precedent to the Township's Issuance of a Certificate of Completion: The Township and Redeveloper hereby acknowledge and agree that the Township's obligation to issue a Certificate of Completion is contingent upon the Redeveloper's completion of the construction and implementation of the Project, including with regard to the completion of Redeveloper's Remediation, if any, and all other obligations as same are set forth herein, including but not limited to, the modification of the Public Access Easement Agreement, the submission of a detailed Common Element Maintenance Plan and the full implementation of the

Municipal Parking Lot Plan.

ARTICLE IX

TAXATION AND FEES

SECTION 9.1 Tax Assessments. Subject to the provisions herein, the Redeveloper agrees that in no event shall the Project Site become tax exempt. The Project must be assessed pursuant to N.J.S.A. 54:4-1, et seq.

SECTION 9.2 Fees. The Redeveloper agrees that there shall be no reductions in sewer, water, or construction fees for the Project and that the Redeveloper's financial commitment to the Project is not conditioned in any way upon receipt of same.

ARTICLE X

PROJECT OVERSIGHT

SECTION 10.1 Progress Meetings/Reports. Upon the Township Engineer's written request, which may be by e-mail, the Redeveloper shall arrange to discuss, in person at a meeting to be scheduled or by conference call, the progress of the construction of the Project. Additionally, Redeveloper shall provide a written progress report to the Township Engineer on a monthly basis, which may comprise an e-mail.

SECTION 10.2 Access to Project Site. The Township and its authorized representatives, including but not limited to the Township Engineer, shall have the right to enter the Project Site upon reasonable prior notice given to the Redeveloper to inspect the Project Site and any and all work in progress. During any such inspection, the Township shall utilize reasonable efforts to minimize any interference with Redeveloper's activities on the Project Site. Such entrance shall be for informational purposes and shall not relieve the Redeveloper of its obligation to construct and implement the Project in accordance with this Agreement. In no

event, at any time, shall the Township's inspection of the Project be deemed acceptance of the work in progress or any completed work or be deemed to waive any right the Township has under this Agreement.

ARTICLE XI

PERMITTED TRANSFERS

SECTION 11.1 Permitted Transfers. Excepting Permitted Transfers, the Parties acknowledge that pursuant to the terms herein, the Redeveloper has covenanted not to effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper, or assign or attempt to assign this Agreement or make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project or the Project Site or this Agreement, without first having obtained the written consent of the Township Committee, which shall be by formal Resolution, provided that the Redeveloper may transfer and assign, subject to the Township's approval, which would be deemed unreasonably withheld, conditioned or delayed, if such transfer or assignment is to a transferee or assignee at least comparable to MB1's financial capacity, real estate development expertise and reputation.

SECTION 11.2 Notice of Permitted Transfers. With respect to any Permitted Transfer (other than leases or sub-leases within the residential portions of the Project), the Redeveloper shall provide to the Township written notice within fifteen (15) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the proposed Transferee parties, individuals and/or entities involved.

ARTICLE XII

REDEVELOPER'S REPRESENTATIONS REGARDING FINANCIAL COMMITMENTS TO THE PROJECT, INCLUDING PAYMENTS TO THE TOWNSHIP

SECTION 12.1 Redeveloper's Financial Commitment. The Redeveloper agrees to proceed with commercially reasonable diligence to obtain and commit the requisite equity and construction loan and/or permanent financing in an amount that is reasonably anticipated by the Redeveloper to comprise, in the aggregate, the requisite funds for the completion of the Project.

SECTION 12.2 Intentionally Deleted.

SECTION 12.3 Governmental Approval Fees. The Redeveloper shall be responsible for the payment of any Governmental Application fees that ordinarily accompany the submission of the relevant Governmental Application materials relating to the Project. In addition thereto, the Redeveloper shall be responsible for establishing an escrow for the costs associated with any professional review services performed by a designated professional on behalf of the Governmental Body to which the Redeveloper's Governmental Application(s) are submitted.

SECTION 12.4 Project Costs. Redeveloper shall be responsible for the payment of costs actually incurred by the Township in connection with the studies, plans, reports or any analyses prepared by or for the Township in connection with the designation of the Project Site as an area in need of rehabilitation as well as for the preparation of the Redevelopment Plan. The Township has determined that the costs incurred by the Township equal \$68,850.00 (the "Project Costs"). Redeveloper shall, within ninety (90) days of the Effective Date of this Agreement, pay said Project Costs in a lump sum to the Township.

SECTION 12.5 Payment of Township Costs. The Redeveloper shall be responsible for the payment of all Township Costs as follows: Within ten (10) days from the Effective Date, Redeveloper shall pay Twenty Thousand Dollars (\$20,000.00) ("**Project Funds**") to the Township to be maintained in a separate account by the Township and to be drawn down upon by the Township to cover Township Costs. The Township shall provide Redeveloper with invoice(s) setting forth the Township Costs which have been drawn down from the Project Funds. Within fifteen (15) days of the receipt by Redeveloper of written notice from the Township that the amount of Project Funds has decreased to Five Thousand Dollars (\$5,000.00), Redeveloper shall replenish the Project Funds to the amount of \$20,000.00. If the Township's Costs exceed the amount of the Project Funds at any given time, Redeveloper agrees to pay such costs upon fifteen (15) days' written notice from the Township stating that such costs are due. Upon the Effective Date of this Agreement, the Conditional Designation Agreement shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms and obligations contained herein, except that any monies which remain on account with the Township from the Conditional Designation Agreement may be rolled over and applied towards the satisfaction of Redeveloper's obligations under this Section.

SECTION 12.6 Governmental Permit Fees. Redeveloper shall pay all fees and post any bonds for any permits or otherwise as may be required by the Township, in accordance with the Township's Ordinances, and any other Governmental Body for the development and construction of the Project.

SECTION 12.7 Allocation of Costs and Redeveloper's Reimbursement Share. Redeveloper shall be entitled to reimbursement of 18.7% of the Project Costs (or \$12,874.95 which is referred to herein as the "**Project Costs Share**") as well as 18.7% of the *actual* costs

incurred by Redeveloper in connection with the implementation of the Wesley Lake Retaining Wall Work and the Municipal Parking Lot Plan (individually and collectively, as the context requires, the “**Reimbursement Share**”), and same shall not be capped at 18.7% of the figures reflected in the Wesley Lake Retaining Wall Estimate or the Municipal Parking Lot Estimate, respectively, as said figures comprise approximate estimates only, all subject to the terms herein. For clarity purposes, the Redeveloper and the Township acknowledge their intention that the Reimbursement Share(s) shall be 18.7% of the actual costs incurred by the Redeveloper, and approved by the Township Engineer, in connection with the Wesley Lake Retaining Wall Work and the Municipal Parking Lot Plan (collectively, the “**Actual Costs**”). The Reimbursement Share of 18.7% represents the proportionate size of the remainder of the Redevelopment Area (i.e. after reducing the size of the overall Redevelopment Area by the size of the Project Site).

In the event that a third party unrelated to Redeveloper or any Affiliate thereof is, in the future, designated as the exclusive redeveloper of any parcel within the remainder of the Redevelopment Area (“**Adjoining Parcel Redeveloper**”), as a condition of entering into a redevelopment agreement with the Adjoining Parcel Redeveloper, the Township shall require Adjoining Parcel Redeveloper to:

- A. Pay directly to the Redeveloper: the Project Cost Share; and
- B. Execute an Off Site Improvements Escrow Agreement with Redeveloper (in the form attached hereto) promptly and in good faith, if applicable pursuant to the terms herein; and
- C. Upon the execution of an Off Site Improvements Escrow Agreement, a copy of which shall be provided to the Township by Redeveloper, pay to the Escrow Holder, to be held in escrow pursuant to the terms of a separate agreement pertaining to portions of the

Reimbursement Share to be held in escrow, in the form attached hereto as **Exhibit "Y"** (the **"Off- Site Improvements Escrow Agreement"**), as set forth herein an amount equal to 18.7% of the performance bond amount that is anticipated to be required by the Planning Board for the Wesley Lake Retaining Wall and the Municipal Parking Lot Plan (which performance bond amount is anticipated to be 120% of Wesley Lake Retaining Wall Estimate and the Municipal Parking Lot Estimate, or 120% of more perfected versions of said Estimates) (the **"Deposit Amount"**). The Parties hereto acknowledge that the Deposit Amount is, nonetheless, based upon estimates and as such, the Deposit Amount is not intended to represent the Actual Costs.

If the Township designates the Adjoining Parcel Redeveloper and executes a redevelopment agreement with the Adjoining Parcel Redeveloper *before* either the Actual Costs or the Deposit Amount is determined, then the amount to be paid to the Escrow Holder by the Adjoining Parcel Redeveloper shall be 120% of the sum of the Wesley Lake Retaining Wall Estimate and the Municipal Parking Lot Estimate, both of which are attached hereto.

Alternatively, if the Actual Costs have been determined *before or by the time* the Township designates the Adjoining Parcel Redeveloper and executes a redevelopment agreement with the Adjoining Parcel Redeveloper, the Township shall require the Adjoining Parcel Redeveloper to pay the Actual Costs directly to the Redeveloper as a condition of said redevelopment agreement in accordance with the terms herein, and in that case, the Parties acknowledge that an Off Site Improvement Escrow Agreement shall not be necessary.

Upon the completion of the implementation of the Wesley Lake Retaining Wall Work and the Municipal Parking Lot Plan, Redeveloper shall submit to the Township Engineer a true and complete copy of all invoices, bills and receipts reflecting its costs incurred in connection with same, respectively. Upon review and acceptance of said costs, the Township Engineer shall

advise the Redeveloper and the Adjoining Parcel Redeveloper, if known, the amount of the Actual Costs in writing. However, Redeveloper shall only be entitled to receive the Actual Costs upon the occurrence of all of the following, as same is set forth in the form of the Off Site Improvements Escrow Agreement: (i) the Adjoining Parcel Redeveloper has executed a redevelopment agreement with the Township for the redevelopment of the remainder of the Redevelopment Area (or any portion thereof) pursuant to a Resolution of the Township Committee (and a copy of both documents shall be provided to the Redeveloper by the Township and the Escrow Holder); (ii) the Wesley Lake Retaining Wall Work and the Municipal Parking Lot Plan have been fully implemented by Redeveloper and inspected and approved in writing by the Township Engineer; and (iii) the invoices, bills and receipts reflecting all costs incurred by Redeveloper in connection with the Wesley Lake Retaining Wall Work and the Municipal Parking Lot have been submitted to the Township Engineer and reviewed and approved in writing by the Township Engineer, thus, determining the amount of the Actual Costs. The Township Engineer shall reasonably accomplish these tasks as promptly as possible.

Notwithstanding anything to the contrary, the Adjoining Parcel Redeveloper's obligation to pay the Project Costs Share and the Actual Costs shall be an express condition of the Township's issuance of any Certificate of Occupancy and Certificate of Completion for any portion of any redevelopment project to be implemented by the Adjoining Parcel Redeveloper, except in the event that either the Wesley Lake Retaining Wall Work or the Municipal Parking Lot Plan shall not have been fully implemented and inspected and approved by the Township Engineer and the Actual Costs determined *before* a Certificate of Occupancy for the Adjoining Parcel Redeveloper's redevelopment project shall otherwise be issued. In that case, the payment of (only) the Actual Costs shall not be such a condition and the Adjoining Parcel Redeveloper's

obligation to pay the Actual Costs shall then be required to be satisfied within ten (10) days of the Township Engineer's inspection and approval of the Wesley Lake Retaining Wall Work and the Municipal Parking Lot Plan and the determination of the amount of the Actual Costs..

As used in this **Section 12.7** of this Agreement, the "**Escrow Holder**" shall mean the attorney or title company licensed to do business in the State of New Jersey which is designated in the Off Site Improvements Escrow Agreement

The Township shall notify the Redeveloper that it has executed a redevelopment agreement with the Adjoining Parcel Redeveloper within five (5) days of having done so. The redevelopment agreement with the Adjoining Parcel Redeveloper shall provide that within ten (10) days from the Township's written notice provided in the preceding sentence, the Adjoining Parcel Redeveloper shall be responsible for (i) the payment to the Redeveloper of the Project Cost Share and (ii) either (a) the execution of the Off Site Improvements Escrow Agreement and the payment to the Escrow Holder of the Deposit Amount or (b) payment to the Redeveloper of the Actual Costs, as the case may be. The redevelopment agreement with the Adjoining Parcel Redeveloper shall further provide that any failure of the Adjoining Parcel Redeveloper to submit these required payments within said time frame shall be a default of the redevelopment agreement.

In any event, the Redeveloper expressly acknowledges for itself and any such Affiliate successor that the Township shall not be required to pay to Redeveloper or any party the Reimbursement Share(s) or the Actual Costs or any portion(s) thereof and further, upon the Township's material performance of its obligations set forth in this **Section 12.7**, the Redeveloper, on behalf of itself and its successors, hereby expressly and fully releases the

Township from any claim or potential claim related to or arising out of all or any portion of the Reimbursement Share(s), including the Project Costs Share and the Actual Costs.

ARTICLE XIII

INDEMNIFICATION AND INSURANCE

SECTION 13.1. Indemnification.

1. Indemnification, Hold Harmless, and Defense of Township Indemnified Parties.

a) Claims. The Redeveloper agrees to indemnify and hold harmless and defend the Township Indemnified Parties, and the Redeveloper shall pay any and all liability, loss, cost, damage, penalty, claim, judgment or expense for bodily injury, including death, or property damage, resulting from: (1) the environmental condition of or any natural resources damages arising out of or alleged to arise out of the Project, including any portion of the Project Site, and any contamination which may be migrating off-site and originating from the Project Site; or (2) Redeveloper's negligence in connection with the Project, and/or Infrastructure Improvements including those arising out of or related to any contract or sub-contract related to the Project (individually, a "Claim" and collectively, "Claims"), except to the extent any Claim is caused by the negligence or willful misconduct, or acts or omissions of the Township and/or the Township Indemnified Parties, pursuant to a written agreement of the Parties, judgment or order (collectively, the "Excepted Claims").

b) Defense. In any situation where the Township Indemnified Parties are entitled and desire to be defended and/or indemnified for any Claim by the Redeveloper, the Township Indemnified Parties shall provide prompt notice of same to the Redeveloper. Failure to provide prompt notice to the Redeveloper, however, shall not relieve the Redeveloper of any responsibility to defend and indemnify the Township Indemnified parties, unless such failure to

provide same materially impairs the Redeveloper's ability to defend the Claim. Upon receipt of such notice, the Redeveloper shall defend any such Claim on behalf of the Township Indemnified Parties and shall be responsible for the payment of all fees, costs and expenses associated with the Claim, including, but not limited to, fees for professionals including legal counsel, engineers, architects, and/or expert witnesses, each selected and engaged by the Redeveloper that is reasonably acceptable to the Township Indemnified Parties. Any cost for reasonable attorneys' fees and/or expert fees associated with the Claim, in situations where it is deemed necessary in the Township's reasonable discretion, including, but not in limited to those situations involving the environmental condition of any portion of the Project Site, shall be promptly paid by the Redeveloper. All of the Township Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, at their cost.

c) Settlement or Judgment. The Redeveloper, with the advice and written approval of the Township, shall have the right to negotiate and consent to any settlement of a Claim; provided however, that neither Party's consent shall be unreasonably withheld, conditioned or delayed with respect to a Claim for which Redeveloper is indemnifying the Township. The Redeveloper shall not be liable for any settlement of any such action effectuated without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Redeveloper or the Township Indemnified Parties in any such action, the Redeveloper shall indemnify and hold harmless the Township Indemnified Parties from and against any loss or liability arising out of such settlement or judgment to the extent pertaining to a Claim (other than an Excepted Claim).

SECTION 13.2 Survival of Indemnity. The provisions of this **Section 13.2**, shall survive and shall run with the land until the earlier of: (i) issuance of a Certificate of Completion or (ii) the termination of this Agreement; provided however, that such provisions shall continue to be effective thereafter with respect to Claims that arose prior to the earlier of: (i) issuance of a Certificate of Completion for the applicable portion of the Project Site or (ii) the termination of this Agreement.

SECTION 13.3 Insurance Required. Prior to any work being undertaken upon any portion of the Project Site by the Redeveloper, and until issuance of a Certificate of Completion, the Redeveloper shall furnish or shall cause to be furnished to the Township, duplicate originals or other reasonable evidence of the following insurance coverage:

1. Commercial General Liability Insurance: including blanket Contractual Liability coverage, insuring the Redeveloper against losses, costs, liabilities, claims, or causes of action arising out of property damage or bodily injury, including death, sustained upon the Project Site; and
2. Builder's Risk Insurance: for the benefit of the Redeveloper, subject to the interests of any Holder, during the term of construction, sufficient to protect against loss or damage resulting from all standard perils, including fire and/or lightning, vandalism, and malicious mischief; and
3. Workers' Compensation Insurance: as required by law, with an employer's liability insurance endorsement with customary limits and a waiver of subrogation clause for the Township, to be carried by each of Redeveloper's contractors and subcontractors; and
4. Comprehensive Automobile Liability Insurance: covering all owned, hired and non-owned vehicles.

All insurance policies required by this Section shall: (i) contain the policy limits set forth in **Exhibit "W"** attached hereto and incorporated by reference; (ii) be obtained from reputable insurance carriers licensed to do business in the State of New Jersey and rated at least A- in Best's Insurance Guide or at a similar level in such other industry-accepted review system; (iii) be maintained for each structure developed and constructed upon the Project Site until a Certificate of Completion is issued; (iv) apply to all bodily injury, including death, property damage, and other customarily covered losses, as applicable, occurring during the policy term; (v) add Township Indemnified Parties as additional insureds; (vi) provide that such coverage shall be primary and non-contributing and that any insurance maintained by the Township shall be excess insurance only; (vii) be endorsed with a waiver of subrogation clause for the Township; (viii) provide that the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the Township; (ix) provide that the Township shall not be liable for any premiums or assessments; and (x) carry commercially reasonable deductibles.

This **Section 13.3** shall not be deemed to relieve any insurance carrier which has issued a policy of insurance as may be required by this Agreement from any obligation to defend the Redeveloper, the Township and any other insured named or named as an additional insured on such policy of insurance in connection with claims, suits or actions covered by such policy.

ARTICLE XIV

EVENTS OF DEFAULT AND REMEDIES

SECTION 14.1 Events of Default. Prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, as applicable, and subject to an event of Force Majeure or other such Tolling Event, each of the following shall constitute an Event of Default, unless stated otherwise herein:

1. Redeveloper's Events of Default.

a) Failure to Pay Township Costs. If the Redeveloper or its successors in interest or assigns knowingly fail to pay any portion of the Township Costs pursuant to the terms of this Agreement, and such failure shall not be cured within thirty (30) days of the Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**; or

b) Failure to Convey Public Access Area Easement. If the Redeveloper does not convey to the Township, in accordance with the terms of this Agreement by the time required by and as set forth herein, the Easements for any of the Public Access Areas, subject only to the election to terminate this Agreement as set forth herein; or

c) Failure to Comply. If the Redeveloper or its successors in interest or assigns fail to adhere to the dates and milestones set forth herein and in the Project Schedule or if the Redeveloper or its successors in interest or assigns willfully suspend construction activities associated with the Project for more than thirty (30) consecutive days (excluding Federal and State of New Jersey holidays) and any such suspension shall not be cured within sixty (60) days of the Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**; or

d) Failure to Pay Taxes. Subject to the provisions herein, if the Redeveloper or its successors in interest or assigns knowingly fail to pay the Township for any real property

taxes within ninety (90) days of when such payment is due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such real property taxes, encumbrance or lien shall not be paid, or the encumbrance or lien removed or discharged within ninety (90) days of the Notice of Default; or

e) Unauthorized Transfers. If the Redeveloper or its successors in interest or assigns, in violation of this Agreement, transfers, except for Permitted Transfers or transfers for which the Township's withholding, conditioning or delaying its approval is deemed unreasonable in accordance with the terms herein, interest in any portion of the Project Site and such violation shall not be cured within sixty (60) days after Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**; or

f) Liquidation. If the Redeveloper or its successors in interest or assigns be liquidated, or file a voluntary petition in bankruptcy or for an arrangement pursuant to applicable bankruptcy laws or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall suspend payment of its obligations, or shall take any action in furtherance of the foregoing, or if the Redeveloper or its successors in interest or assigns consent to the appointment of a receiver, or an answer proposing the adjudication of the Redeveloper or its successors in interest or assigns, as applicable, as bankrupt or subject to reorganization pursuant to applicable bankruptcy laws shall be filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within thirty (30) days from entry thereof, or if the Redeveloper or its successors in interest or assigns, as applicable, consent to the filing of such petition or answer;

or

g) Foreclosure. If the Redeveloper or its successors in interest or assigns permit an entry of a judgment in foreclosure or the issuance of a Deed in Lieu of Foreclosure relating to any financing in connection with the Project; or

h) Failure to Perform Covenant or Condition. If the Redeveloper or its successors in interest or assigns fail to perform any covenant or condition contained in this Agreement and where such failure of any obligation of Redeveloper's under this Agreement shall not be cured for thirty (30) days after Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6;** .

i) Termination of Ground Lease Agreement. If the Ground Lease Agreement is terminated by Redeveloper or by the Owner.

2. Township's Events of Default.

a) Amendment to Redevelopment Plan Rendering Project a Prohibited Use. If the Governing Body adopts any amendment(s) to the Redevelopment Plan that would materially render the Project or any material portion thereof a prohibited use or where such amendment(s) to the Redevelopment Plan would knowingly and materially affect the marketability or feasibility of the Project; or

b) Failure to Cooperate. If the Township fails to reasonably cooperate with the Redeveloper's efforts to complete and submit any necessary Governmental Application or if the Township fails to reasonably cooperate with the Redeveloper's efforts to obtain any of the necessary Governmental Approval(s), provided that the Redeveloper is otherwise diligently pursuing said Governmental Approval(s) and providing that the Township's cooperation is: (a) a requirement of such application or approval or would otherwise reasonably assist in the timely issuance of said Governmental Approval and (b) requested in writing by Redeveloper reasonably

in advance of any applicable related timeframe, and such violation shall not be cured within thirty (30) days after Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**; or

c) Failure to Issue Certificate of Completion. If the Township knowingly and unreasonably fails to issue a Certificate of Completion for the Project; or

d) Failure to Serve Notice. If the Township fails to serve upon the Redeveloper a written notice of deficiency(ies) within the time permitted by this Agreement in response to its Site Plans submitted by the Redeveloper or in connection with the issuance of a Certificate of Completion and where such violation shall not be cured within thirty (30) days after Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**; or

e) Failure to Perform Covenant or Condition. If the Township knowingly and unreasonably fails to perform any obligation of the Township's under this Agreement and where such failure shall not be cured for thirty (30) days after Notice of Default, in accordance with the terms and conditions set forth in **Section 14.6**.

Notwithstanding any provision to the contrary, it shall not be an Event of Default by either of the Parties if a court of competent jurisdiction issues a ruling, not sought by either Party hereto, the effect of which is to render invalid the implementation of this Agreement or the pertinent section or terms and conditions of this Agreement.

SECTION 14.2 Remedies Upon Event Of Default.

1. Redeveloper Remedies. In an Event of Default by the Township, the Redeveloper may take whatever action, at law or in equity, it may deem desirable, including the pursuit of damages, except any consequential damages, or the Redeveloper may institute such proceedings

as may be necessary or desirable in its discretion to cure and remedy such Event of Default, including, but not limited to, proceedings to compel specific performance by the Township.

2. Township Remedies. In an Event of Default by the Redeveloper, then the Township may take whatever action, at law or in equity, it may deem desirable, including the pursuit of damages, except any consequential damages. For the purposes of clarification, upon an Event of Default under **Section 14.1(1)**, the Township shall also have its rights under the Tax Sale Law and other Applicable Law with respect to non-payment of real estate taxes. Additionally, during the continuance of an Event of Default by the Redeveloper, the Township shall have right to take one or more the following actions:

a) Cease, halt or withhold review of applications for any and all Governmental Approvals sought by the Redeveloper;

b) Cease, halt or withhold the approval process of any and all Governmental Approvals sought by the Redeveloper from the Township;

c) Cease, halt or withhold the issuance of any permit or approval, including, but not limited to, permits, any Certificates of Occupancy, and/or a Certificate of Completion, sought by the Redeveloper;

d) Cease, halt, or withhold cooperation with the Redeveloper; or

e) Upon the adoption of a Resolution by the Township Committee, terminate this Agreement, in which case, the Redeveloper's designation as the exclusive Redeveloper of the Project Site shall automatically terminate and become null and void.

Redeveloper acknowledges and agrees that the selection of one or more of the Township's remedies set forth above shall not impact or impair the Township's right and ability

to select and implement any other remedies set forth above, elsewhere in this Agreement, or available in law or equity.

SECTION 14.3 Relief of Obligations. Upon an Event of Default and a Notice of Default sent to the Redeveloper pursuant to the terms of this Agreement, or upon termination of this Agreement by the Township in accordance with the terms of this Agreement, the Township shall be relieved of each and every obligation under this Agreement until such default has been cured or remedied by the Redeveloper in accordance with the terms of this Agreement, as applicable. Upon a Township Event of Default and a Notice of Default sent to the Township pursuant to the terms of this Agreement, or upon termination of this Agreement by the Redeveloper in accordance with the terms of this Agreement, the Redeveloper shall be relieved of each and every obligation under this Agreement until such default has been cured or remedied by the Township in accordance with the terms of this Agreement, as applicable.

SECTION 14.4 Force Majeure or Tolling Events. The Parties acknowledge and agree that the performance or non-performance by both or either of the Parties of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is the result of a Force Majeure or other such Tolling Event; provided however, that the Force Majeure or Tolling Event was not the result of or did not arise out of any unlawful action or non-action of the party relying on such Force Majeure or Tolling Event as justification for the performance, failure of performance, or delay in performance of the subject obligation, requirement, commitment or other responsibility. In the event of a Force Majeure or other Tolling Event, either Party hereto may automatically obtain an extension of any affected date in

the Project Schedule by notifying the other Party of the Force Majeure or Tolling Event, but only for so long as the Force Majeure or Tolling Event reasonably requires.

SECTION 14.5 No Waiver of Rights and Remedies by Delay. Any delay by an aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or shall not deprive the aggrieved party of or limit the aggrieved party's rights in any way nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the defaulting party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other default(s) by the defaulting party under this Agreement or with respect to the particular default, except to the extent specifically waived in writing.

SECTION 14.6 Notice and Opportunity to Cure. Notwithstanding anything to the contrary elsewhere stated in this Agreement, no Event of Default shall be deemed to occur or be continuing unless and until a Party ("**Non-Defaulting Party**") claiming an Event of Default has sent written notice ("**Notice of Default**") to the other Party ("**Defaulting Party**") specifying in reasonable detail the event that gives rise to a claim of default under this Agreement whereupon the Parties shall cooperate and attempt in good faith to resolve such claim. If any Event of Default cannot be reasonably remedied within the timeframe specified herein, or if no timeframe is specified herein, then within the thirty (30) days following the date of the Notice of Default, it shall not be deemed to be an Event of Default as long as the Defaulting Party (or its successors in interest or assigns, as applicable) is proceeding with due diligence to remedy same in good faith as soon as practicable.

ARTICLE XV

MISCELLANEOUS

SECTION 15.1 Notices. Any notice to be provided pursuant to this Agreement shall be sent certified, return receipt requested, as follows:

If to the Redeveloper:

OG NORTH END DEVELOPMENT, LLC
c/o Joel Brudner
MB1 Capital Partners, LLC
801-E Main Street
Belmar, New Jersey 07719

with a copy to:

William P. Gannon, Esq.
108 South Main Street
Ocean Grove, New Jersey 07756

And

David S. Messer, Esq.
c/o David S. Messer, Esq., LLC
1500 Allaire Avenue
Suite 101
Ocean, New Jersey 07712

If to the Township:

Mayor and
Members of the Township Committee
25 Neptune Boulevard
Neptune, New Jersey 07753

with a copy to:

Joanne Vos, Esq.
Maraziti Falcon, LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

SECTION 15.2 Non-Liability of Officials and Employees of the Township. No member, agent, official, employee, representative, or consultant of the Township's shall be personally liable to the Redeveloper or any of the Redeveloper's successors in interest or assigns, in an Event of Default or breach by the Township, or for any amount which may become due to the Redeveloper or its successors in interest or assigns, or on any obligation under the terms of this Agreement.

SECTION 15.3 Non-Liability of Officials and Employees of Redeveloper. No member, agent, officer, employee, representative, director, or partner of the Redeveloper shall be personally liable to the Township or any of the Township's successors in interest or assigns, in an Event of Default or breach by the Redeveloper, or for any amount which may become due to the Township or its successors in interest or assigns, on any obligation under the terms of this Agreement.

SECTION 15.4 Estoppel Certificate. Within thirty (30) days following written request by either of the Parties or of any Holder, purchaser, tenant or other party having an interest in the Project Site or any portion thereof, the other party shall issue a signed Estoppel Certificate, as that term is defined herein. No more than two (2) Estoppel Certificates may be requested per year (i.e. any period of 365 consecutive days as opposed to a calendar year) by either of the Parties or any Holder. It is acknowledged and agreed by the Redeveloper and the Township that such Estoppel Certificate may be relied upon by any financial institution, lender, mortgage assignee, prospective mortgage assignee or prospective purchaser of any portion of the Project Site. In addition to other Events of Default identified herein, failure of either Party to provide such Estoppel Certificate in accordance with the terms hereof shall constitute an Event of Default for purposes of this Agreement.

SECTION 15.5 Intentionally Deleted.

SECTION 15.6 No Financial Consideration For Redevelopment Agreement. The Redeveloper warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with this Agreement, which shall not be deemed to include costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys and commitments to the Project Site owner. The Redeveloper further hereby warrants and covenants it has not paid or incurred any obligation to pay any officer or official of the Township any money or other consideration for or in connection with this Agreement.

SECTION 15.7 Conflict of Interest. No member, agent, official, employee, or representative of the Township has or shall acquire any interest, direct or indirect, in the Project or the Project Site or in any property included or planned to be included in this Project, or has or shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with the Project or Project Site, in accordance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-11(c).

SECTION 15.8 Successors and Assigns/No Third-Party Beneficiary. This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest and assigns of the Parties and their heirs, executors, and administrators. No provision of this Agreement shall be deemed to be for the benefit of, or enforceable by, any third party.

SECTION 15.9 Exhibits. All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though fully set forth herein.

SECTION 15.10 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 15.11 Severability. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 15.12 Execution of Counterpart. This Agreement may be executed in one or more counterparts. This Agreement shall become binding upon the Parties and such counterparts shall constitute one and the same instrument, upon the Effective Date of this Agreement.

SECTION 15.13 Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 15.14 Drafting Ambiguities and Interpretation. In the interpretation of any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each of the Parties acknowledging that it and its counsel have had ample opportunity to review this Agreement and have contributed to the final form of same.

SECTION 15.15 Time Period for Notices. All notices to be served hereunder shall be provided in writing in conformance with the terms of this Agreement and, unless a certain number of days is specified, within a reasonable time.

SECTION 15.16 Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

SECTION 15.17 Recitals Definitions and Exhibits Incorporated. The Recitals, Definitions and Exhibits to this Agreement and/or contained within this Agreement are hereby incorporated by reference into this Agreement, as if fully set forth herein.

SECTION 15.18 Entire Agreement. This Agreement constitutes the entire agreement for the redevelopment of the Project Site between the Parties. Any prior redevelopment, development or similar agreements between the Parties, or between the Township and any predecessors in title or other parties related to any portion of the Project Site are hereby terminated and superseded. To the extent any documents related to any such prior agreements have been recorded or filed in the Office of the Clerk of Monmouth County, the Parties shall cooperate to cause them to be terminated of record.

SECTION 15.19 Township Approval. Any approvals or consent of the Township referenced in this Agreement shall be by formal Resolution of the Township Committee, unless expressly stated otherwise.

ARTICLE XVI

FINANCING PROVISIONS

SECTION 16.1 Redeveloper Financing. The Township acknowledges that Redeveloper intends, and is permitted under this Redevelopment Agreement, to obtain construction mortgage financing for all or part of the costs of development and construction of for the Project. Redeveloper shall notify the Township of any such financing secured by a mortgage or other lien instrument which it enters into with respect to the Project Site or the Project or any part thereof (the mortgagee thereunder or its Affiliate, a “**Holder**”). Redeveloper

may collaterally assign to the Holder the Redeveloper's rights under this Agreement with respect to the Project Site, which such assignment shall be subject to the rights of the Township in **Section 16.4** to designate a Holder or its designee as a Subsequent Redeveloper. No Holder shall be deemed to be an assignee or transferee of this Agreement or the interest of the Redeveloper under this Agreement so as to require such Holder to assume the performance of, or be bound to perform, any of the terms, covenants or conditions under this Agreement other than as set forth in **Section 16.4** hereof.

SECTION 16.2 Notice of Default to Holder and Right to Cure. Whenever the Township shall deliver any Notice of Default to Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to each Holder a copy of same, provided that Redeveloper has delivered to the Township a written notice identifying the name and address of such Holder. Each such Holder shall have the right at its option within sixty (60) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being so cured. If such default can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Project Site (or portion to which its mortgage relates) with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within sixty (60) calendar days after obtaining possession. If the default cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such sixty (60) days period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

SECTION 16.3 No Guarantee of Development, Construction or Completion of the Project. A Holder shall in no manner be obligated by the provisions of this Redevelopment

Agreement to develop, construct or complete the Project (or any portion to which its mortgage relates), or to guarantee such development, construction or completion; nor shall any covenant or any other provisions be construed to so obligate a Holder. Notwithstanding the foregoing, nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or completion of the Project, or any portion to which its mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having been designated by the Township as a Subsequent Redeveloper, as that term is defined herein.

SECTION 16.4 Foreclosure.

1. Holder's Options: In the event of a Foreclosure, a Holder shall have the right, but not the obligation, at its option to: (a) sell the right to construct the Project to a Subsequent Redeveloper to undertake or continue the development, construction or completion of the Project as set forth herein; or (b) expressly assume the obligations of Redeveloper under this Agreement (collectively "**Holder's Options**"); provided however, that one of the Holder's Options is exercised within twelve (12) months of the transfer of title resulting from the Foreclosure (the "**Transition Period**"), the failure of which may result in the Township's termination of this Agreement, as further set forth herein.

a) Extension(s) of Project Schedule: In furtherance of the foregoing, the Holder, or a Subsequent Redeveloper, as the case may be, assuming the obligations of Redeveloper hereunder, shall enter into a written agreement with the Township to complete the Project in the manner provided in this Agreement, subject to reasonable extensions of the Project Schedule (the "**Subsequent Redevelopment Agreement**").

b) Completion of Project: Any such Holder or Subsequent Redeveloper, as the case may be, assuming the obligations of Redeveloper hereunder, completing the Project or any portion thereof in the manner provided in this Agreement and/or otherwise pursuant to the Subsequent Redevelopment Agreement, shall be entitled to respective Certificates of Occupancy and a Certificate of Completion in accordance herewith.

2. Expiration of Transition Period. In the event that Holder declines to exercise one of the Holder's Options as set forth above, then the Township shall have the option to terminate this Agreement and to undertake condemnation proceedings in accordance with the Redevelopment Law, as may be applicable.

3. Enforcement of Redeveloper's Violations Against Holder or Subsequent Redeveloper: In the event of a Foreclosure, the Township shall not seek to enforce against the Holder or Subsequent Redeveloper any remedies available to the Township pursuant to the terms of this Agreement for any Events of Default by Redeveloper which occurred prior to the Foreclosure.

4. No Deviation from Project Description by Holder or Subsequent Redeveloper: Subject to the provisions herein, nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or any Subsequent Redeveloper, as the case may be, to devote the Project Site, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements, respectively, provided for hereunder.

5. Modification of Agreement: If the Holder or Subsequent Redeveloper requires a modification of the terms of this Agreement, the Township shall reasonably cooperate with the Holder or Subsequent Redeveloper in approving and implementing such modification, so long as such modification does not materially alter the Township's obligations or rights as set forth in

the Agreement, or materially change the Project. Any such modifications, which may be by amendment of this Agreement, shall be formally approved by Resolution of the Township Committee.

SECTION 16.5 Statutory Protections. Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of a Holder set forth in this Agreement, the provisions of N.J.S.A. 55:17-1 to N.J.S.A. 55:17-11, inclusive, shall apply to this Agreement to protect the interests of any Holder.

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IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

Attest:

TOWNSHIP OF NEPTUNE

By: _____
Hon. Carol Rizzo, Mayor

Witness:

OG NORTH END DEVELOPMENT, LLC
By: MB2 Ocean Grove, LLC, Member

Dated: _

By: _____
Joel S. Brudner, Manager

By: Westley Atlantic Village Enterprises Limited
Liability Company, Member

Dated: _

By: _____
William Gannon, Managing Member

(Signature Page for Redevelopment Agreement)

STATE OF NEW JERSEY)
) ss:
COUNTY OF MONMOUTH)

I CERTIFY that on _____, 2019, _____ personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Mayor of the Township of Neptune, named in this document;
- (b) this document was signed and delivered by the Township as its voluntary act duly authorized by a proper resolution of the Township; and
- (c) this person signed this proof to attest to the truth of these facts.

Name:

Signed and sworn to before me
on _____, 2019

Notary Public

Attachment B to Resolution #19-335
Form of Public Access Easement Agreement

Record and Return to:
Joanne Vos, Esq.
Maraziti Falcon, LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

Prepared By:

Joanne Vos, Esq.

PUBLIC ACCESS EASEMENT AGREEMENT

THIS PUBLIC ACCESS EASEMENT AGREEMENT ("Public Access Agreement") is made on this __ day of _____, 2019, by and between:

OG NORTH END DEVELOPMENT, LLC, a New Jersey limited liability company, having an address at 801 Main Street, Belmar, New Jersey 07719 (hereinafter referred to as "Grantor" or "Redeveloper" or "OGNED"), including its successors and assigns, unless expressly stated otherwise; and

THE TOWNSHIP OF NEPTUNE, a New Jersey municipal corporation, with government offices located at 25 Neptune Boulevard, Neptune, New Jersey 07753 (hereinafter referred to as "Grantee" or "Township") (collectively, the Grantor and Grantee shall be referred to as the "Parties").

WITNESSETH:

WHEREAS (#1), Block 1.01, Lots 3 and 4, and a portion of Lot 2, (the "Project Site"), as currently shown on the Official Tax Map of the Township of Neptune, County of Monmouth, State of New Jersey, lies within an area that has been determined, by Resolution No. 07-310, adopted June 11, 2007 by the Neptune Township Committee, to be "in need of redevelopment" in accordance with the provisions of the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, *et seq.*); and

WHEREAS (#2), the Township Committee of the Township of Neptune (the "Township Committee"), by Ordinance, subsequently adopted the Ocean Grove North End Redevelopment Plan (the "Redevelopment Plan"), which is applicable to the Project Site; and

WHEREAS (#3), Redeveloper is the ground lessee, by way of a long-term lease (the "Ground Lease") with the Ocean Grove Camp Meeting Association (the "Owner"), of the Project Site; and

WHEREAS (#4), the Township and Redeveloper have entered into that certain Redevelopment Agreement (the “Redevelopment Agreement”), a fully executed copy of which is on file at the Town Hall, which memorializes the terms and conditions by which Redeveloper will implement and carry out a redevelopment project involving the construction of a Hotel, Residential Condominiums, Single Family Homes and Retail establishments, among other components, in accordance with the Redevelopment Plan (hereinafter, the “Project”); and

WHEREAS (#5), the Redevelopment Agreement includes the provision of certain easements upon the Project Site by the Grantor to the Township, for the benefit of the public, subject to all applicable laws, rules, regulations and ordinances (collectively, “Applicable Laws”) and the terms and conditions herein, in order to facilitate the public’s access to and enjoyment of Wesley Lake and the Waterfront Promenade, as such terms are defined in the Redevelopment Agreement and/or are delineated or depicted on the Open Space Plan attached hereto as **Attachment A**, (collectively and together with any other spaces within the Project Site that are so depicted as public access areas on the Open Space Plan, referred to herein as the “Public Access Areas” or the “Public Access Easement Areas”); and

WHEREAS (#6), additionally, an unobstructed pathway to afford a view through the Project Site to Wesley Lake from Spray Avenue as same is depicted on **Attachment A** (the “View Corridor” or the “View Corridor Easement Area”) shall be preserved as a conservation easement in perpetuity (collectively, the Public Access Areas and the View Corridor shall be referred to as the “Easement Areas”).

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the promises, covenants and conditions hereinafter contained, Grantor, including its successors and assigns forever, does hereby grant and convey to Grantee, its successors and assigns forever, and Grantee does hereby accept, the easements set forth herein on the terms and conditions herein contained.

GENERAL PROVISIONS

1. **Grantor Parties.** The Parties acknowledge and agree that all of Grantor's affirmative obligations herein shall be binding upon OGNED, as the Redeveloper of the Project Site, as well as any of OGNED's successors in interest and assigns which may ultimately operate and/or own/occupy the Project Site or any portion thereof, as the case may be ("Successors"). The obligations herein shall run with the land and shall survive the conveyance or transfer of the Owner's and/or OGNED's interest in the Project Site or any portion thereof to a Successor, as well as the issuance of any Certificate of Completion for the Project. Once OGNED's affirmative obligations hereunder are expressly assumed by its Successors, as set forth herein and in, *inter alia*, the Redevelopment Agreement (*see* "Form of Ownership and Maintenance of Common Elements" and also "Covenants That Shall Expressly Survive Certificate of Completion"), as evidenced by the Township's receipt of a recorded Condominium Master Deed (the "Assumption"), OGNED shall no longer be responsible for same and the Grantee shall be deemed to have released and discharged OGNED accordingly, except as may be expressly stated otherwise.

2. **Indemnification.** Grantor shall indemnify, defend and hold harmless Grantee, and Grantee's members, officers, agents, contractors and other representatives from and against any and all liability, lawsuits, claims, damages, losses, costs and expenses including, without limitation, reasonable attorneys' fees, court costs and legal expenses ("Claims") arising out of, relating to or resulting from the negligent, reckless or intentional act or omission of Grantor or Grantor's members, officers, agents, contractors and other representatives, in the maintenance, repair, construction or reconstruction of any improvements within or upon, or any other act undertaken with respect to, the Easement Areas, but only to the extent that the Grantee's negligent, reckless or intentional act or omission did not cause the Claims. OGNED's obligation to so indemnify Grantee shall survive the Assumption only to the extent that the Claims first arose during OGNED's operation and/or ownership/occupancy of the Project Site.

3. **Insurance.** In furtherance of the Grantor's obligations set forth in Paragraph 2 above regarding Indemnification, promptly upon the Assumption, Grantor shall provide insurance for

Grantee's benefit in accordance and compliance with the terms and conditions set forth on **Attachment B**.

4. **Notices.** All notices or other communications required to be given under this Public Access Agreement shall be given in writing and delivered personally or mailed by certified or registered mail, postage prepaid, or by a respectable priority delivery service such as Federal Express or UPS, addressed to the address first set forth above. The foregoing addresses may be changed or supplemented by written notice given as provided herein. Any notice, if sent by mail, shall be deemed to have been received by the addressee on the third business day after posting in the United States mail; if sent by priority delivery service, on the first business day after being deposited with such service, or if delivered personally, on the day of such delivery.

5. **Binding Effect.** The terms, covenants and conditions herein contained shall run with the land in perpetuity and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except as may be otherwise expressly stated herein.

6. **Governing Law.** This Public Access Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

7. **No Other Agreements.** This Public Access Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, except as otherwise stated herein. This Public Access Agreement shall not be modified or terminated except by a written instrument signed and authorized by both Grantor and Grantee.

8. **Execution/Effective Date.** As set forth in the Redevelopment Agreement, this Public Access Agreement shall be executed in recordable form simultaneously with the execution of the Redevelopment Agreement and held in escrow according to the terms of an Escrow Agreement therefore to become effective upon implementation of the improvements comprising the Public Access Areas at which time a legal description of the as-built Public Access Areas shall be prepared and attached as **Attachment A(1)**.

9. **Recording.** This Public Access Agreement shall, upon the preparation and attachment of a legal description of the as-built Public Access Areas, be promptly recorded by OGNED at no cost to Grantee in the Office of the Monmouth County Register and, upon being recorded, a recorded copy shall be promptly delivered by Grantee to Grantor at no cost to Grantee.

10. **Miscellaneous.** If any provision of this Public Access Agreement is found to be invalid or unenforceable, the remainder of this Public Access Agreement shall be unaffected thereby. The paragraph headings are for convenience and reference only and shall not limit or otherwise affect the meaning hereof. This Public Access Agreement may be simultaneously executed in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

11. **Modification.** This Public Access Agreement is not subject to any collateral conditions or any conditions precedent, and as further stated herein, cannot be modified or amended in any manner other than by written agreement executed and authorized by the Parties hereto. In furtherance of same, the Parties acknowledge and agree that, as further set forth in the Redevelopment Agreement and in this Public Access Agreement, **Attachment A** hereto shall be modified and supplemented only with a metes and bounds description of each of the Public Access Areas, as well as a metes and bounds description of the Pedestrian Plaza to be appended as **Attachment A(1)**, promptly upon completion of the construction of the Project, without the necessity for any further authorizing legislation of the Township unless otherwise prohibited by applicable laws. Said modification (i.e. only the supplementation of **Attachment A** and the addition of **Attachment A(1)** with metes and bounds descriptions) shall be undertaken by the Grantor upon and pursuant to the Township's receipt, review and approval (by the Township Engineer) of said metes and bounds descriptions. Grantor shall thereafter promptly provide Grantee with a copy of the recorded Public Access Agreement, as modified, at no cost to Grantee.

EASEMENT FOR PUBLIC ACCESS AREAS

12. **Grant of Public Access Easements.** Grantor grants to Grantee, and Grantee accepts from Grantor, a non-exclusive right of way and easement over, upon and across the Public Access Areas within the Project Site for the purposes of providing the public with certain open air gathering

places and access to and egress from the waterfront of Wesley Lake, respectively. The Public Access Areas are depicted on **Attachment A** attached hereto and made a part hereof.

13. **Construction.** The Grantor, at its sole cost and expense, shall complete the construction of the Project in accordance with the Redevelopment Plan, Redevelopment Agreement and all Governmental Approvals, including that of the Planning Board of the Township of Neptune.

14. **Ongoing Maintenance of the Public Access Areas.** Grantor, at Grantor's sole cost and expense, shall maintain the Public Access Areas, including with regard to snow, ice and leaf removal and all other necessary maintenance. The Public Access Areas shall be kept in a safe, clean condition, free of trash and debris and regularly and appropriately maintained by Grantor, at no cost to the Grantee, and same shall be set forth in the Common Element Maintenance Plan as more specifically detailed in the Redevelopment Agreement. The Grantor acknowledges and agrees that the requirements hereunder to maintain the Public Access Areas in a safe, clean condition, free of trash and debris at no cost to the Grantee comprise covenants that shall run with the land and expressly survive the issuance of a Certificate of Completion. As further set forth Paragraph 1 hereof regarding Grantor Parties, upon the Assumption, OGNED shall no longer be responsible for the maintenance of any Public Access Areas.

15. **Reservation of Rights by Grantor.** Grantor shall also have the right to use, occupy and enjoy the surface of, the subsurface under, and the air space over the Public Access Areas for any lawful purpose which does not unreasonably or materially interfere with or unreasonably or materially threaten the safe, proper or convenient use, occupancy or enjoyment of the Public Access Areas by the public. Additionally, the Parties acknowledge and agree that the public's access to and utilization of the Public Access Areas shall be subject to the Code of Conduct attached hereto as **Attachment C** and to applicable laws.

a. **Hours:** Except with regard to the Waterfront Promenade, which the Parties agree shall comprise dedicated public open space to which the public shall have continuous, uninterrupted access, twenty-four hours per day, every day, Grantor shall promulgate and post

designated hours about the Project Site during which the public may access the other Public Access Areas, with such hours of closure being no more or longer than dusk to dawn, daily.

b. Rules and Regulations, Generally: In addition to the Code of Conduct, Grantor may promulgate other reasonable rules and regulations regarding the access to and public enjoyment of the Public Access Areas for purposes of health, safety, welfare and the environment.

c. Prohibition of Discrimination: Grantor shall not discriminate against any person or group of persons, on account of race, color, religious principles, creed, nationality, ancestry, familial status, disability, marital status, sex, affectional or sexual orientation or gender identity or expression in the provision of access to any of the Public Access Areas or enjoyment of any portion thereof, nor shall the Grantor itself, or any person claiming under or through the Grantor, establish or permit any such practice or practices of discrimination.

LIMITED EASEMENT FOR PUBLIC ACCESS TO PEDESTRIAN PLAZA

16. Grant of Limited Easement for Public Access. Grantor grants to Grantee, and Grantee accepts from Grantor, a non-exclusive right of way and limited easement over, upon and across the Pedestrian Plaza, as that term is utilized in the Redevelopment Plan and defined in the Redevelopment Agreement (i.e. comprising the plaza-like area in front of the grand entryway to the Hotel, running south from the Hotel entryway to Spray Avenue, to be improved as part of the Project), for the purposes of providing the public with certain open air gathering space. The Parties acknowledge and agree that the Pedestrian Plaza shall not be deemed a "Public Access Area" for purposes of this Public Access Agreement in that the Grantor (or the Hotel or its designee) shall retain operation and control over the Pedestrian Plaza and as such, may impose reasonable restrictions upon public access thereto.

17. Rules and Regulations for Pedestrian Plaza. For purposes of clarity only, Grantee recognizes that the Grantor (or the Hotel or its designee) may promulgate reasonable rules and regulations regarding the access to and public enjoyment of the Pedestrian Plaza and further, may elect to close the Pedestrian Plaza to the public on occasion for certain periods of time for purposes of hosting private events, such as, by way of example, weddings. However, the Parties further agree

and recognize the intent that the Pedestrian Plaza is to provide the public with a gathering space, as set forth in the Redevelopment Plan, and as such, restrictions on access thereto shall be reasonable and exercised with appropriate restraint such that the public is not only granted regular, meaningful access during the off-season (i.e. Fall, Winter and Spring). Under no circumstances may access to the Pedestrian Plaza be unreasonably or regularly prohibited or terminated.

18. **Construction.** The Grantor, at its sole cost and expense, shall construct and improve the Pedestrian Plaza in accordance with the Redevelopment Plan, Redevelopment Agreement and all Governmental Approvals, including that of the Planning Board of the Township of Neptune.

19. **Prohibition of Discrimination:** Grantor shall not discriminate against any person or group of persons, on account of race, color, religious principles, creed, nationality, ancestry, familial status, disability, marital status, sex, affectional or sexual orientation or gender identity or expression in the provision of access to the Pedestrian Plaza, as set forth herein, nor shall the Grantor itself, or any person claiming under or through the Grantor, establish or permit any such practice or practices of discrimination in connection with the provision of access to the Pedestrian Plaza as set forth herein.

CONSERVATION EASEMENT FOR THE VIEW CORRIDOR

20. **Grant of View Corridor Conservation Easement.** Grantor grants to Grantee, and Grantee accepts from Grantor, a View Corridor Easement as is located and depicted as set forth on **Attachment A** attached hereto and made a part hereof. The Grantee acknowledges that the View Corridor as depicted thereon is in conformance and compliance with the requirements of the Redevelopment Plan.

21. **No Obstructions Within the View Corridor.** Except as otherwise stated in this Public Access Agreement, the Grantor relinquishes all rights to construct, erect or maintain any structures, masonry walls, or monument signs within the View Corridor; plant and maintain shrubbery or hedges; or raise the grade; in such a way, or do anything in such a way, that would cause an obstruction to a clear view to Wesley Lake as set forth herein and in the Redevelopment Plan and the Redevelopment Agreement.

22. **Ongoing Maintenance of the View Corridor.** Grantor, at Grantor's sole cost and expense, shall maintain and do all things necessary and appropriate to preserve and conserve the View Corridor, including with regard to leaf, snow and ice removal and all other necessary maintenance. The View Corridor shall be kept in a safe, clean condition, free of trash and debris and regularly and appropriately maintained by Grantor, at no cost to the Grantee, and same shall be set forth in the Common Element Maintenance Plan, as required in the Redevelopment Agreement. The Grantor acknowledges and agrees that the requirements hereunder to maintain the View Corridor in a safe, clean condition, free of trash and debris at no cost to the Grantee shall comprise covenants that shall run with the land and expressly survive the issuance of a Certificate of Completion. As further set forth Paragraph 1 hereof regarding Grantor Parties, upon the Assumption, OGNED shall no longer be responsible for the maintenance of any Public Access Areas, including the View Corridor.

23. **Reservation of Rights by Grantor.** Subject to the following conditions, the Grantor reserves the right to construct open fencing and implement landscaping within the View Corridor, but only to the extent that such improvements do not obstruct public views through the Project Site, to Wesley Lake, as depicted on **Attachment A**. Any such landscaping shall be planted and maintained to preserve the View Corridor. Grantor shall also have the right to use, occupy and enjoy the subsurface under the View Corridor for any lawful purpose which does not unreasonably or materially interfere with or unreasonably or materially threaten or obstruct the View Corridor or any portion thereof. For the purposes of this provision, and notwithstanding anything to the contrary contained herein, Grantee hereby agrees that the construction, installation, repair, replacement or maintenance within the View Corridor of sewer, gas, electric and other utilities and appurtenant facilities, installed in compliance with all applicable legal requirements, shall not be deemed to unreasonably or materially interfere with or unreasonably or materially threaten the safe, proper or convenient use, occupancy or enjoyment of the View Corridor or any portion thereof by the public.

[Remainder of Page is Intentionally Blank. Next Page is the Signature Page.]

IN WITNESS WHEREOF, Grantor and Grantee have each executed this Public Access Agreement as of the date and year first set forth above. Grantee executes this Public Access Agreement to acknowledge its consent to the terms and conditions herein contained.

OG NORTH END DEVELOPMENT, LLC,

By: MB2 Ocean Grove, LLC, Member

By: _____
Joel S. Brudner, Manager

By: Westley Atlantic Village Enterprises Limited Liability Company, Member

By: _____
William Gannon, Managing Member

TOWNSHIP OF NEPTUNE, a New Jersey Municipal Corporation,

By: _____
Carol Rizzo
Mayor

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: **SS.**
COUNTY OF MONMOUTH :

Be it remembered that on this ___ day of _____, 2019, _____ personally appeared before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person executed the attached document as _____ of OG North End Development Group, LLC, the Grantor named in this document;

(b) this document was signed and made by the Grantor as its duly authorized and voluntary act and deed; and

(c) the full and actual consideration paid, or to be paid for the within Easement, evidenced by the within Deed, as such consideration is defined in N.J.S.A. 46:15-7 is \$1.00.

Attorney at Law of New Jersey
or Notary Public

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: **SS.**
COUNTY OF MONMOUTH :

Be it remembered that on this ____ day of _____, 2019, _____ personally appeared before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person executed the attached document on behalf of the Township of Neptune, a New Jersey municipal corporation, the Grantee named in this document;

(b) this document was signed and made by said Grantee as its duly authorized and voluntary act and deed; and

(c) the full and actual consideration paid, or to be paid for the within Easements, evidenced by the within Deed, as such consideration is defined in N.J.S.A. 46:15-7 is \$1.00.

Attorney at Law of New Jersey
or Notary Public

ATTACHMENT A

**OPEN SPACE PLAN (PUBLIC ACCESS AREAS AND VIEW CORRIDOR)
to be supplemented with
LEGAL DESCRIPTIONS OF PUBLIC ACCESS AREAS AND VIEW CORRIDOR**

ATTACHMENT A(1)

LEGAL DESCRIPTION OF PEDESTRIAN PLAZA (to be appended)

ATTACHMENT B
INSURANCE REQUIREMENTS

Grantor shall furnish or shall cause to be furnished to the Grantee, duplicate originals or other reasonable evidence of the following insurance coverage:

1. Commercial General Liability Insurance: including blanket Contractual Liability coverage, insuring the Grantor and Grantee against losses, costs, liabilities, claims, or causes of action arising out of property damage or bodily injury, including death, sustained upon, within or as a result of any of the Easement Areas; and
2. Workers' Compensation Insurance: as required by law, with an employer's liability insurance endorsement with customary limits and a waiver of subrogation clause for the Grantee, to be carried by each of Grantor's contractors and subcontractors; and
3. Comprehensive Automobile Liability Insurance: covering all of Grantor's owned, hired and non-owned vehicles, as applicable.

All insurance policies required shall: (i) contain the policy limits set forth below; (ii) be obtained from reputable insurance carriers licensed to do business in the State of New Jersey and rated at least A- in Best's Insurance Guide or at a similar level in such other industry-accepted review system; (iii) be maintained for each Easement Area until the Public Access Agreement is terminated or this Insurance requirement is modified by written agreement of the Parties; (iv) apply to all bodily injury, including death, property damage, and other customarily covered losses, as applicable, occurring during the policy term; and (v) add Grantee, its officers, agents, employees, contractors and consultants as additional insureds; (vi) provide that such coverage shall be primary and non-contributing and that any insurance maintained by the Grantee shall be excess insurance

only; (vii) be endorsed with a waiver of subrogation clause for the Grantee; (viii) provide that the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the Grantee; (ix) provide that the Grantee shall not be liable for any premiums or assessments; and (x) carry commercially reasonable deductibles.

Coverage	Limits
1. Workers Compensation	Statutory
2. Employer's Liability	Statutory or \$1,000,000 by accident, \$1,000,000 by disease, each employee, \$1,000,000 by disease, all employees, whichever is greater
3. Commercial General	\$1,000,000 per any one occurrence for Bodily Injury and Property Damage, \$2,000,000 annual Aggregate including Independent Contractors, Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury Liability.
4. Comprehensive Automobile	\$1,000,000 per any one occurrence for liability, including owned, hired and non-owned vehicles. Where environmental exposures exist for the Contractors or Subcontractors or consultants of the Redeveloper then they must evidence MCS 90 ENDORSEMENT AND ISO CA 99 48 BROADENED POLLUTION COVERAGE ENDORSEMENT WITH A \$3,000,000 LIMIT
5. Excess Liability	\$3,000,000.00 per any one occurrence for liability. The Umbrella must maintain coverage at least as broad as the primary policies.

ATTACHMENT C

CODE OF CONDUCT FOR USE OF PUBLIC ACCESS AREAS AND PEDESTRIAN PLAZA

While in the Public Access Areas, all persons shall conduct themselves in a proper and orderly manner, and in particular, no person shall:

1. Access the Public Access Areas and Pedestrian Plaza outside of the hours of dawn to dusk.
2. Willfully mark, deface, disfigure, injure, tamper with, displace or remove any buildings, tables, benches, railings, paving materials, public utilities or appurtenances thereof, signs, notices or placards (whether temporary or permanent), monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or property or appurtenances whatsoever, either real or personal.
3. Dig or remove any soil, rock, sand, stones, trees, shrubs, plants or other wood or, materials, or make any excavation by tool, equipment, or other means.
4. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick flowers or seed of any tree or plant, dig in or otherwise disturb grassed areas, or in any other way injure the natural beauty or usefulness of any area.
5. Climb any tree or walk, stand or sit upon monuments, vases, planters, fountains, railings, fences or upon any other property not designated or customarily used for such purposes.
6. Tie or hitch an animal to any tree or plant.
7. Have brought in, dump in, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, garbage, refuse, or organic or inorganic solid liquid waste.
8. Drive or park any vehicle on any area except as specifically designated.
9. Ride a bicycle without reasonable regard to the safety of others.
10. Leave a bicycle lying on the ground or paving or set against trees, or in any place or position where a person may trip over or be injured by it.
11. No person shall carry or possess firearms of any description, spring-guns, bow and arrows, slings or any other forms of weapons or devices potentially dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges.
12. Set up tents, shacks, or any other temporary shelter for the purpose of overnight camping, nor shall any person leave after closing hours any movable structure or special vehicle to be used or that could be used for such purpose, such as a house-trailer, camp-trailer, camp-wagon, or the like except in those areas designated by Township of Neptune for those purposes.
13. Bring alcoholic beverages or drink same at any time except in such areas and under such regulations as may be designated and permitted by Township of Neptune.

14. Have in his/her possession, set or otherwise cause to explode, discharge, or burn, any fireworks, firecrackers, or explosives or flammable material, or discharge them or throw them into any such areas from lands or highways adjacent thereto.
15. Solicit alms or contributions for any purpose, whether public or private.
16. Build, or attempt to build, a fire. No person shall drop, throw or otherwise scatter lighted matches, burning cigarettes, cigars, tobacco, paper or other flammable material within any park or on any highways, roads, or streets abutting or contiguous thereto.
17. Gamble, participate in, or abet any game of chance.
18. Disturb or interfere unreasonably with any person or party occupying any area or participating in any permissible activity.
19. Expose, or offer for sale, any article or thing, nor place any stand, cart, or vehicle for the transportation, sale, or display of any such article or thing.
20. Paste, glue, tack, or otherwise post any sign, placard, advertisement, or inscription whatever, nor shall any person erect, or cause to be erected, any sign on any park lands or roads in any park.
21. Smoke, chew, or possess lighted cigarettes, pipes, cigars, electronic cigarettes, or any other type of tobacco product.

Attachment C to Resolution #19-335
Form of Escrow Agreement for Executed Public Access Easement Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "**Agreement**") is made as of this ____ day of _____, 20__ by and among **OG North End Development, LLC** ("**Grantor**" or "**Redeveloper**"), including its successors and assigns unless expressly indicated otherwise, having an address of 801-E Main Street, Belmar, New Jersey 07719, and **The Township of Neptune**, having an address of 25 Neptune Boulevard, Neptune, New Jersey 07753 ("**Grantee**" or the "**Township**"), and **David S. Messer, Esq., LLC**, having an address of 1500 Allaire Avenue, Suite 101, Ocean, New Jersey 07712 ("**Escrow Agent**"), sometimes hereinafter collectively referred to as the "**Parties**" and individually referred to as a "**Party**".

RECITALS

WHEREAS, as further set forth in that certain Redevelopment Agreement by and between Redeveloper and Township dated _____, 20__ (the "**Redevelopment Agreement**"), Grantor and Grantee have executed that certain Public Access Easement Agreement as _____, 20__ (referred to herein as the "**Easement Agreement**") with regard to the real property designated on the Tax Map of the Township of Neptune as Block 1.01, Lots 3 and 4 and a portion of Lot 2, more commonly known as "North End" (the "**Property**"); and

WHEREAS, Grantor intends to grant certain perpetual easements across certain portions of the Property in favor of the Township and for the benefit of the public (collectively, the "**Public Access Areas**") pursuant to the terms of the Redevelopment Agreement and the Easement Agreement; and

WHEREAS, pursuant to the terms of the Redevelopment Agreement, until such time as the redevelopment project being undertaken by Redeveloper is completed (the "**Project**"), the Easement Agreement is to be held in escrow by the Escrow Agent in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Easement Agreement is to be recorded in the Office of the Monmouth County Clerk, as set forth in the Redevelopment Agreement; and

WHEREAS, as a condition of the Redevelopment Agreement, and as provided for in this Agreement, the Parties must execute and deliver to each other this Escrow Agreement, which shall govern Escrow Agent's release of the executed Easement Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which shall be deemed a substantive part of this Agreement, and the mutual covenants, promises, and agreements set forth in this Agreement, the adequacy and receipt of which is hereby acknowledged by the Parties, and intending to be legally bound hereby, the Parties do hereby agree as follows:

1. **Establishment of Escrow.** Pursuant to the Redevelopment Agreement, simultaneously with the execution and delivery of this Agreement, and assuming that the appropriate authorizing Ordinance has been fully adopted by the Township Committee of the Township of Neptune, Grantor and Grantee shall execute, acknowledge (as appropriate), and deposit with the Escrow

Agent, the executed Easement Agreement. Escrow Agent hereby agrees to act as escrow agent and to hold and release the Easement Agreement pursuant to the terms and conditions of this Agreement.

2. **Terms of Escrow.** The Easement Agreement shall be held in escrow and not to be deemed effective or released from escrow until such time as the Project has been completed, as evidenced by the Township's issuance of the first Certificate of Occupancy for the Project. Upon the satisfaction of this condition, Escrow Agent shall release the executed Easement Agreement to Grantor for recording.

i. **Liability.** Escrow Agent shall not be liable for its actions or omissions hereunder, except to the extent that a court of competent jurisdiction determines, by a final and non-appealable judgment or order, that any damage or loss to a party hereto (other than damages or losses otherwise excluded herein) resulted from an action or omission of the Escrow Agent that constituted gross negligence and/or willful misconduct by Escrow Agent. Further, in no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or losses (including, but not limited to, lost profits), even if the Escrow Agent had been advised of the likelihood of such damages or loss and regardless of the form of action. The Escrow Agent shall not be liable for acts of God, acts of war, breakdowns or malfunctions of machines or computers, interruptions or malfunctions of communications or power supplies, labor difficulties, actions of public authorities or any other cause or catastrophe beyond the Escrow Agent's reasonable control.

ii. **Indemnification.** The Escrow Agent shall not be obligated to take any legal action or commence any proceedings in connection with the Escrow Agreement, or appear in, prosecute or defend any such legal action or proceeding. The Escrow Agent may consult legal counsel (including its own General Counsel) in the event of any dispute or as to any question relating to this Escrow Agreement, and the Escrow Agent shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. The Grantor and Grantee shall promptly and equally pay, upon demand, the reasonable fees and expenses of any such counsel.

iii. **Resignation.** Escrow Agent may resign at any time upon at least ten (10) business days' prior written notice to each of the Grantor and the Grantee. If, prior to the effective date of such resignation, Grantor and Grantee shall have formally approved, in writing, a successor escrow agent, then upon the resignation of Escrow Agent, same shall deliver the Easement Agreement, to such successor escrow agent. From and after such resignation and the delivery of the Easement Agreement to such successor escrow agent, the resigning Escrow Agent shall be fully relieved of all of its duties, responsibilities and obligations under this Agreement, all of which duties, responsibilities and obligations shall be performed by the appointed successor escrow agent. If for any reason each of the Grantor and Grantee shall not approve a successor escrow agent within such period, the resigning Escrow Agent may bring any appropriate action or proceeding for leave to deposit the Easement Agreement with a court of competent jurisdiction, pending the approval of a successor escrow agent, and upon such deposit the resigning Escrow Agent shall be fully relieved of all of its duties, responsibilities and obligations under this Agreement.

iv. **No Compensation.** Escrow Agent shall serve without compensation as its duties are purely ministerial in nature. However, Redeveloper hereby agrees to, jointly and severally, indemnify, defend and hold harmless Escrow Agent from and against any liabilities, damages,

losses, costs and expenses incurred by, and claims or charges made against Escrow Agent (including, without limitation, reasonable attorneys' fees and disbursements) by reason of Escrow Agent performing its obligations pursuant to, and in accordance with, the terms of this Agreement, but in no event shall Escrow Agent be indemnified for its gross negligence and/or willful misconduct in connection with its duties hereunder, if its conduct is so deemed by a court of competent jurisdiction, by a final and non-appealable order.

The Escrow Agent has agreed to serve in such capacity, as an accommodation, on the condition that the Redeveloper and the Township agree that the Escrow Agent may continue to act as legal counsel to the Redeveloper. The Redeveloper has also entered into this Escrow Agreement on such condition. The Township acknowledges that the Escrow Agent has acted as legal counsel to the Redeveloper in connection with the Redevelopment Agreement, this Escrow Agreement and other matters relating thereto and agrees that the Escrow Agent shall be entitled to continue to represent the Redeveloper during and after the term of this Escrow Agreement, including, without limitation, with respect to the rights and obligations of the Redeveloper under this Escrow Agreement, the Redevelopment Agreement and all matters relating thereto.

v. Dispute. In the event that a dispute shall arise in connection with this Agreement, Escrow Agent shall have the right to (w) hold the Easement Agreement until such dispute is settled or finally determined by litigation, arbitration or otherwise, or (x) deposit the Easement Agreement in an appropriate court of law, following which Escrow Agent shall thereby and thereafter be relieved and released from any liability or obligation under this Agreement, or (y) institute an action in interpleader or other similar action permitted by stakeholders in the State of New Jersey, or (z) interplead Grantor and Grantee in any action or proceeding which may be brought to determine the rights of those Parties to the Easement Agreement.

3. Entire Agreement. This Agreement expressly sets forth all of the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent. With regard to the Easement Agreement, Escrow Agent shall not be bound by the provisions of any agreement among the other Parties except this Agreement. Terms used in this Agreement as defined terms and not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Redevelopment Agreement.

4. Notice. The notice provisions of the Redevelopment Agreement shall also apply to this Agreement, with all notices to Escrow Agent to be delivered to:

David S. Messer, Esq.
Law Offices of David S. Messer, Esq., LLC
1500 Allaire Avenue, Suite 101
Ocean, New Jersey 07712

5. Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey, without reference to conflicts of law principles. The Parties submit to the jurisdiction of the courts of the State of New Jersey.

6. Modification. No change, addition or modification to this Agreement shall be valid unless it is contained in a writing signed by the Grantor, Grantee and Escrow Agent.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

8. Authority. Each of the individuals signing this Agreement represents and warrants that he or she has the authority to sign this Agreement on behalf of the party for whom he or she is signing and to bind such party to this Agreement.

9. Counterparts. This Agreement may be signed in one or more counterparts, all of which shall constitute a single entire agreement. The exchange of executed copies of this Agreement by facsimile or Portable Document Format ("PDF") transmission shall constitute effective execution and delivery of this Agreement as to the Parties for all purposes; signatures of the Parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be signed as of the date first above written.

TOWNSHIP OF NEPTUNE

By: _____
Hon. Carol Rizzo, Mayor

OG NORTH END DEVELOPMENT, LLC

By: MB2 Ocean Grove, LLC, Member

By: _____
Joel S. Brudner, Manager

By: **Westley Atlantic Village Enterprises
Limited Liability Company, Member**

By: _____
William Gannon, Managing Member

Law Offices of David S. Messer, Esq.

By: _____
David S. Messer, Esq.

EXHIBIT "A"
PROPERTY SURVEY

EXHIBIT "B"
PRE-SUBMISSION FORM

EXHIBIT "C"
COMMON ELEMENTS MAINTENANCE PLAN

EXHIBIT "D"

1. CONSTRUCTION MITIGATION PLAN

2. TRUCK ROUT MAP

EXHIBIT "E"

HOTEL LOADING/SURFACE PARKING

EXHIBIT "F"
PARKING PLAN GARAGE LEVEL

EXHIBIT "G"
OPEN SPACE DIAGRAM

EXHIBIT "H"
PROJECT DESCRIPTION

EXHIBIT "I"
PROJECT SCHEDULE

EXHIBIT "J"
PROJECT TEAM

EXHIBIT "K"

PUBLIC ACCESS EASEMENT AGREEMENT FORM

EXHIBIT "L"

REDEVELOPER'S DECLARATION FORM

EXHIBIT "M"

SOILS & FOUNDATION INVESTIGATION REPORT

EXHIBIT "N"
STORMWATER MANAGEMENT PLAN

EXHIBIT "O"
TRAFFIC IMPACT EXECUTIVE SUMMARY

EXHIBIT "P"

SITE PLAN

EXHIBIT "Q"
BOARDWALK GATEWAY FEATURE

EXHIBIT "R"
GREEN ROOF SUSTAINABILITY PLAN

EXHIBIT "S"
ESCROW AGREEMENT

EXHIBIT "T"

- 1. WESLEY LAKE RETAINING WALL ESTIMATE**
- 2. WESLEY LAKE RETAINING WALL CONCEPT PLAN**

EXHIBIT "U"
MUNICIPAL PARKING LOT PLAN

EXHIBIT "V"
MUNICIPAL PARKING LOT ESTIMATE

EXHIBIT "W"
INSURANCE COVERAGE

Coverage	Limits
1. Workers Compensation	Statutory
2. Employer's Liability	Statutory or \$1,000,000 by accident, \$1,000,000 by disease, each employee, \$1,000,000 by disease, all employees, whichever is greater
3. Commercial General	\$1,000,000 per any one occurrence for Bodily Injury and Property Damage, \$2,000,000 annual Aggregate including Independent Contractors, Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury Liability.
4. Comprehensive Automobile	\$1,000,000 per any one occurrence for liability, including owned, hired and non-owned vehicles. Where environmental exposures exist for the Contractors or Subcontractors or consultants of the Redeveloper then they must evidence MCS 90 ENDORSEMENT AND ISO CA 99 48 BROADENED POLLUTION COVERAGE ENDORSEMENT WITH A \$3,000,000 LIMIT
5. Excess Liability	\$3,000,000.00 per any one occurrence for liability. The Umbrella must maintain coverage at least as broad as the primary policies.

EXHIBIT "X"

TOWNSHIP PROJECT TEAM

Township of Neptune Business Administrator
Vito D. Gadaleta, RMC, QPA, NJCEM

Township of Neptune Engineer
Leanne R. Hoffman, PE, PP, CME, CPWM

Planner:

Jennifer C. Beahm, PP, AICP
Leon S. Avakian, Inc.
788 Wayside Road
Neptune, New Jersey 07753

Special Redevelopment Counsel:

Joseph J. Maraziti, Jr., Esq.
Joanne Vos, Esq.
Maraziti Falcon, LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
(973) 912-9008 office
jvos@mfhenvlaw.com

EXHIBIT "Y"

OFF-SITE IMPROVEMENTS ESCROW AGREEMENT