

## **LAND ACQUISITION AND DISPOSITION AGREEMENT**

THIS LAND ACQUISITION AND DISPOSITION AGREEMENT ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2006 by and between the VILLAGE OF OSSINING, a municipal corporation organized and existing under the laws of the State of New York having its principal offices at 16 Croton Avenue, Ossining, New York 10562 (the "Village") and HARBOR SQUARE, LLC, a limited liability company organized and existing under the laws of the State of New York having its principal offices at 115 Stevens Avenue, Valhalla, New York 10595 (the "Developer").

### **WITNESSETH:**

WHEREAS, the Village has adopted certain criteria for the redevelopment of the Village waterfront as set forth in the Village of Ossining Main Street and Waterfront Plan prepared by Christopher Chadbourne & Associates dated September 1994, as revised March 1995, the Village of Ossining Local Waterfront Revitalization Program ("LWRP") adopted on July 2, 1991, and approved on July 11, 1991, and the Zoning Law of the Village of Ossining, revised December 1990 (collectively, the "Waterfront Plan"); and

WHEREAS, the Waterfront Plan seeks to enhance public access to the waterfront, eliminate nonconforming uses, protect and encourage water-dependent uses, and promote the development of mixed use residential and retail commercial uses on the waterfront; and

WHEREAS, in furtherance of the objectives of the Waterfront Plan, the Village issued a written Request for Proposals dated April 23, 1998 (the "RFP"), returnable on June 15, 1998; and

WHEREAS, Cappelli Enterprises, Inc. ("Cappelli"), in response to the RFP, submitted a conceptual plan to the Village dated July 24, 1998, as supplemented by various submissions to the Board subsequent thereto, which plan included generally 300 residential units (mix of rental/sales), a 10,000 square foot restaurant, 20,000 square feet of general retail, a 100 unit Marriott Residence Inn, 1049 parking spaces, including a structured parking garage consisting of a minimum of 575 spaces, a dedicated public park and various public and dedicated open spaces (the "Original Project"); and

WHEREAS, the Village held numerous public comment periods and public forums to discuss and receive input regarding the various developer proposals; and

WHEREAS, numerous written and oral submissions were made to the Village regarding said proposals; and

WHEREAS, on October 6, 1998, at a regular meeting of the Village of Ossining Village Board (the "Village Board"), the Village Board by Resolution selected Cappelli as the

preferred developer to exclusively negotiate, for a period up to ninety (90) days, a development agreement with the Village in accordance with the RFP; and

WHEREAS, the Village and Cappelli entered into an Exclusivity Agreement dated October 22, 1998, the terms of which are incorporated herein, whereby the Village agreed to deal exclusively with Cappelli in connection with the development of the Waterfront Plan and the Village agreed not to enter into or agree to enter into any negotiations or discussions with any other firm, person, or other entity with respect to the Waterfront Plan for a period to terminate on January 6, 1999; and

WHEREAS, the Exclusivity Agreement was extended by the Village Board by Resolutions dated January 5, 1999 and January 19, 1999, respectively, extending the aforementioned termination date to February 20, 1999; and

WHEREAS, Cappelli transmitted to the Village Manager a good faith non-refundable certified check of Twenty-Five Thousand Dollars (\$25,000.00) in accordance with the terms of the Exclusivity Agreement, which funds shall be used, among other things, to reimburse the Village for any expenses it occurs in the negotiation and completion of the Development Agreement; and

WHEREAS, the Village and Cappelli entered into a Development Agreement dated March 18, 1999 (the "Development Agreement"), which document sets forth the general terms and conditions for the development of the Original Project, subject to a full environmental review under the State Environmental Quality Review Act ("SEQRA") and the governing regulations thereof, in which the parties acknowledged that based upon the findings issued in connection with said SEQRA review, the Original Project might be modified, reduced in scope or rejected in whole or part; and

WHEREAS, Cappelli filed with the Village a preliminary site plan of the Original Project, as well as an Environmental Assessment Form ("EAF") under SEQRA, in accordance with the Development Agreement; and

WHEREAS, in connection with the Original Project, Cappelli submitted to the Village Board a Petition to Amend the Zoning Law of the Village (the "Petition") by adding a new Section 270-21(C)(7) entitled "Planned Waterfront and Railway Development" (the "PWRD Zoning Amendments"), which establishes a new use in the WD-1 District subject to special permit approval and establishes, among other things, design standards and bulk and area requirements for such use; and

WHEREAS, a Draft Scope of Work for a Draft Environmental Impact Statement ("DEIS") was prepared by Cappelli in accordance with 6 N.Y.C.R.R. Section 617.8; and

WHEREAS, by Resolution dated April 20, 1999, the Village Board directed that a notice to assume Lead Agency status be circulated among the various involved and interested agencies, together with a copy of the EAF, the Draft Scope of Work, and the preliminary site plan of the Original Project, indicating that the Village Board desires to assume Lead Agency

status and conduct a coordinated review of the Original Project in accordance with Article 8 of the Environmental Conservation Law ("ECL") of the State of New York, and the regulations promulgated thereunder at 6 N.Y.C.R.R. Section 617.6(b); and

WHEREAS, the Village Board received no written objections within 30 days of its notice to assume Lead Agency status; and

WHEREAS, by Resolution dated June 8, 1999, the Village Board (i) assumed Lead Agency status in connection with the SEQRA review of the Original Project, (ii) determined that the proposed action may have a significant effect on the environment and that a DEIS be prepared, (iii) directed that a public scoping session be held in accordance with 6 N.Y.C.R.R. Section 617.8, and (iv) directed that a written notice of its determination of significance and notice of the scheduled public scoping session, together with a copy of the Draft Scope of Work of the DEIS, be sent to all involved agencies, as well as made available to all known individuals or interested agencies that had expressed an interest to the Village Board in the Original Project; and

WHEREAS, the Village Board published a Notice of Public Scoping, as well as sent copies of said notice with a copy of the Draft Scope of Work to all involved and interested agencies, as well as to all known individuals and interested organizations that expressed an interest to the Village Board in the Original Project; and

WHEREAS, the Village Board conducted a public scoping session on June 24, 1999, in which various speakers commented upon and expressed their concerns on the Draft Scope of Work; and

WHEREAS, subsequent to the public scoping session, the Village Board received and reviewed written comments on the Draft Scope of Work; and

WHEREAS, pursuant to the instruction of the Village Board, its consultants met with Cappelli and its consultants to discuss changes in the Draft Scope of Work in accordance with the comments and concerns expressed during the public scoping session and subsequent written submissions; and

WHEREAS, on or about August 17, 1999, the Village Board adopted a Final Scope of Work for the DEIS and determined that it is consistent with the criteria set forth under 6 N.Y.C.R.R. Section 617.8(f); and

WHEREAS, the Village Board further directed that the Final Scope of Work be distributed to all involved and interested agencies, as well as any individual or organization that expressed an interest in writing to the Village Board concerning the Draft Scope of Work and/or the Original Project; and

WHEREAS, shortly thereafter, a number of circumstances arose, which motivated Cappelli to petition the Village to seek to modify the Development Agreement, including, but not limited to the damage to the Project Site (hereinafter defined) caused by Hurricane Floyd; and

WHEREAS, the parties engaged, in consultation with their respective consultants, in extensive negotiations and analyses, including detailed fiscal evaluations, to determine whether the Original Project remained feasible and/or required modification; and

WHEREAS, the Village Board held a public meeting on July 13, 2000, and conducted other consultation sessions with interested and involved parties to solicit comment on proposed modifications to the Development Agreement and to the Original Project; and

WHEREAS, the Village Board received written comments from the public concerning the proposed modification to the Original Project; and

WHEREAS, the Village and Cappelli thereafter determined to modify the Original Project (the "First Modified Project") in accordance with the terms and conditions of a certain Amended and Restated Development Agreement; and

WHEREAS, on August 15, 2000, the Village Board approved the Amended and Restated Development Agreement, authorized the Village Manager to execute the agreement on behalf of the Village, and adopted a Revised Final Scope of Work in connection with the First Modified Project; and

WHEREAS, on February 6, 2001, the Village adopted a Notice of Completion of the DEIS and scheduled public hearings on the DEIS to be held March 7, 2001, and March 8, 2001, respectively; and

WHEREAS, public hearings on the DEIS were held on March 7, 2001 and March 8, 2001, respectively; and

WHEREAS, at said public hearings, numerous comments were received by the Village regarding the DEIS and the First Modified Project; and

WHEREAS, following the aforesaid public hearings, discussions were held between the Village and Cappelli in an effort to ascertain whether certain modifications to the First Modified Project might better mitigate the potential impacts of the First Modified Project as identified in the DEIS, including, but not limited to, reduction of the density; and

WHEREAS, the Village and Cappelli thereafter agreed upon certain modifications to the First Modified Project (as so modified, the "Second Modified Project") as set forth in and in accordance with the terms and conditions of a certain proposed Modified and Amended Restated Development Agreement between the Village and Cappelli; and

WHEREAS, on December 19, 2001, the Village Board approved the Modified and Amended and Restated Development Agreement and authorized the Village Manager to execute the agreement on behalf of the Village; and

WHEREAS, following consultation with the Village Board and its consultants,

Cappelli submitted to the Village Board revisions to the previously proposed PWRD Zoning Amendments to conform to the Second Modified Project, the Village's land use policies and comprehensive plans for the waterfront, and respond to various public comments offered during the DEIS review process (as so revised, the "Revised Zoning Amendments"); and

WHEREAS, a preliminary Final Environmental Impact Statement ("FEIS") was submitted to the Village Board on December 14, 2001; and

WHEREAS, at a meeting of the Village Board on February 12, 2002, the Village Board referred the Petition and the proposed Revised Zoning Amendments to the Planning Board of the Village of Ossining (the "Planning Board") for a report pursuant to Section 270-62 of the Code of the Village of Ossining; and

WHEREAS, the preliminary FEIS was revised on February 1, 2002, March 1, 6, 13, and 14, 2002, respectively, in response to information and comments received from Cappelli's consultants and the Village Board's own consultants; and

WHEREAS, the Village Board, as Lead Agency, at a meeting of the Village Board on March 19, 2002, determined that the information submitted in the FEIS was complete pursuant to Section 617.9 of SEQRA's governing regulations and accepted the FEIS for the Second Modified Project; and

WHEREAS, the Village Board by resolution dated March 19, 2002, further directed that the FEIS and Notice of Completion of the FEIS be filed and circulated in accordance with 6 N.Y.C.R.R. Section 617.12, that copies of the FEIS be filed with the Public Library and the Clerk's Office of the Village of Ossining for public review, that a joint public hearing on the FEIS and the Revised Zoning Amendments be held on April 11, 2002, at which time the public would have an opportunity to be heard, and that written comments on the FEIS and Revised Zoning Amendments would be accepted until April 22, 2002; and

WHEREAS, the Planning Board duly considered the Revised Zoning Amendments at its meetings on February 26 and March 26, 2002, respectively, and issued a report to the Village Board on March 26, 2002, recommending that the Village Board adopt the same and finding that the proposed amendments are consistent with the LWRP; and

WHEREAS, at a meeting of the Village Board on March 26, 2002, the Village Board referred the FEIS and the Revised Zoning Amendments to the Westchester County Planning Board pursuant to Sections 239L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code; and

WHEREAS, the notice of joint public hearing was published in the Journal News on March 26, 2002, and the appropriate notices were sent to the required parties on that date; and

WHEREAS, on April 2, 2002, the Village Board referred a Coastal Assessment Form ("CAF") for the Second Modified Project, the FEIS and the Revised Zoning Amendments to the Environmental Advisory Council of the Village (the "EAC") for a written recommendation

with respect to the consistency of the Second Modified Project and the Revised Zoning Amendments with the LWRP; and

WHEREAS, a joint public hearing on the Revised Zoning Amendments was held on April 11, 2002, at which numerous comments were received by the Village Board; and

WHEREAS, at the April 11, 2002 joint public hearing, the Village Board also announced it had recently discovered additional comment letters on the DEIS, which were inadvertently omitted from the FEIS, and that an Addendum to the FEIS would be prepared responding to these letters; and

WHEREAS, at a meeting of the Village Board on April 23, 2002, the Village Board accepted the Addendum to the FEIS, adopted an amended Notice of Completion of the FEIS, extended the written comment period on the FEIS until May 10, 2002, and directed that the Addendum, Revised Notice of Completion and accompanying letter be distributed to all those on the FEIS circulation list, as well as be made available to the public at various locations; and

WHEREAS, at a meeting of the EAC on May 6, 2002, the EAC voted to recommend to the Village Board that it found the Second Modified Project and the Revised Zoning Amendments to be consistent with the LWRP to the maximum extent practicable, subject to a minor amendment to the LWRP (the "LWRP Amendment") to amend the implementation section of the LWRP to account for the Revised Zoning Amendments, which report was submitted to and received by the Village Board on May 14, 2002; and

WHEREAS, at a meeting of the Village Board on May 21, 2002, the Village Board adopted the "Lead Agency's SEQRA Findings Statement and Local Waterfront Revitalization Plan Consistency Determination" in connection with the Second Modified Project and all actions related thereto, including the Revised Zoning Amendments (the "Findings"), pursuant to Article 8 of the ECL and 6 N.Y.C.R.R. Part 617, and enacted Local Law No. 4-2002, which adopted the Revised Zoning Amendments and thereby added a new Section 270-21(C)(7) of the Zoning Law of the Village of Ossining to become operative immediately for the purpose of establishing the special permit use described therein and for the purpose of allowing applicants to submit applications for special permit approval, site development plan approval, Board of Architectural Review approval, and any other approvals consistent therewith, and to become effective upon approval by the New York State Department of State ("NYSDOS") of the LWRP Amendment; and

WHEREAS, on May 23, 2002, in accordance with new Section 270-21(C)(7) of the Zoning Law of the Village, Cappelli submitted to the Village Board an application for special permit approval and an application for site development plan approval, and an application to the Board of Architectural Review, all for the Second Modified Project; and

WHEREAS, on May 24, 2002, the Village submitted the proposed LWRP Amendment to NYSDOS together with a request that NYSDOS process the proposed amendment as a "minor amendment" in accordance with the regulations set forth at 19

N.Y.C.R.R. Part 601; and

WHEREAS, at the June 4, 2002 Village Board meeting, the Village Board referred the Developer's application for special permit approval to the Planning Board for a report pursuant to Section 270-57 of the Zoning Law of the Village; and

WHEREAS, by letter dated June 18, 2002, NYSDOS advised the Village that it had determined that the LWRP Amendment was a "minor amendment" pursuant to 19 N.Y.C.R.R. §601.4; and

WHEREAS, at its June 25, 2002 meeting, the Planning Board issued a report to the Village Board recommending approval of the application for special permit approval of the Second Modified Project; and

WHEREAS, at its meeting on July 2, 2002, the Village Board scheduled a combined public hearing on the applications for special permit and site development plan approvals of the Second Modified Project, to be held on July 16, 2002; and

WHEREAS, on July 16, 2002, the Village Board held a duly noticed combined public hearing on the applications for special permit and site development plan approvals of the Second Modified Project, and the public hearing was closed on that date; and

WHEREAS, on August 19, 2002, in response to comments made by the Village Board, the Planning Board, Village staff, Village consultants and the public, Cappelli submitted to the Village a revised site plan showing certain minor modifications to the Second Modified Project (as so modified, the "Third Modified Project"); and

WHEREAS, on September 17, 2002, the Village Board granted special permit and site development plan approvals of the Third Modified Project (as so approved, the "Approved Plan"); and

WHEREAS, on December 31, 2002, the NYSDOS conditionally approved the LWRP Amendment (the "NYSDOS Conditional Approval"), provided that the Village Board revise the LWRP and Section 270-21(C)(7) of the Zoning Law of the Village (the "PWRD Law") to conform to the NYSDOS Conditional Approval, including, but not limited to, the addition of: (i) a maximum limit on the ratio of residential building area; (ii) a provision to include ferry services as a permitted use; (iii) the deletion of the authority of the Village Board to waive special requirements; (iv) a revision to provide a maximum building height of no greater than eighty (80) feet (seven (7) stories), consistent with other regional waterfront developments; and (v) deletion of the amendment that would remove the prohibition against locating special permit uses on or over the Hudson River; and

WHEREAS, the Village and Cappelli engaged in discussions regarding possible revisions to the Approved Plan in response to the NYSDOS Conditional Approval; and

WHEREAS, on July 29, 2005, Cappelli submitted to the Village applications for amended site development plan approval and amended special permit approval (collectively, the "Applications") of a further modified project (the "Fourth Modified Project"), reflecting, among other things, a reduction in the number of dwelling units from 180 to 150 dwelling units, a reduction in the maximum building height from 99.5 to 79.5 feet, the dwelling units all in one building, and the restaurant/retail space all in one single-story building; and

WHEREAS, on July 29, 2005, Cappelli further submitted a Petition to the Village requesting that the PWRD Law be amended, and that the LWRP Amendment be revised to conform to the NYSDOS Conditional Approval; and

WHEREAS, on July 29, 2005, in connection with the Applications and Petition, Cappelli also submitted a full Environmental Assessment Form, as well as a comprehensive narrative Environmental Assessment (collectively, the "EA"), analyzing the proposed Fourth Modified Project, and whether the changes presented by the Fourth Modified Project as compared to the Approved Plan would result in any new significant potential adverse environmental impacts, which were not previously addressed; and

WHEREAS, on August 2, 2005, Cappelli submitted to the Village a Coastal Assessment Form ("CAF") for the Fourth Modified Project, and a revised EA incorporating the results of traffic counts conducted on July 16 and 20, 2005; and

WHEREAS, on August 2, 2005, the Village Board reaffirmed its Lead Agency status in connection with the SEQRA review of the Fourth Modified Project, and indicated that it shall conduct a coordinated review of the Fourth Modified Project in accordance with Section 617.6(b)(3) of SEQRA's governing regulations; and

WHEREAS, the EA was circulated to all involved and interested parties for their review and comment; and

WHEREAS, the EA, Petition and Applications were circulated to all internal Departments within the Village, as well as the Village's planning consultant, for their review and comment; and

WHEREAS, on August 2, 2005, the Village Board referred the EA, Petition and Applications to the Westchester County Planning Board; and

WHEREAS, on August 2, 2005, pursuant to Sections 270-62 and 270-57 of the Code of the Village of Ossining, the Village Board referred the EA, Petition and Applications to the Planning Board for a report specifically on the changes to the Approved Plan as reflected in the Fourth Modified Project and on the proposed amendments to the PWRD Law; and

WHEREAS, on August 2, 2005, pursuant to Section 262-5(C) of the Code of the Village of Ossining, the Village Board referred the CAF, EA, Applications and Petition to the EAC for a written recommendation specifically whether the changes to the Approved Plan as shown in the Fourth Modified Project and the proposed amendments to the PWRD Law and



revisions to the LWRP Amendment are consistent with the LWRP policy standards and conditions (as the LWRP is proposed to be amended to comply with the NYSDOS Conditional Approval); and

WHEREAS, on August 5, 2005, Cappelli submitted revised plans of the Fourth Modified Project, as well as a further revised EA and a supplementary, revised traffic impact analysis for the Fourth Modified Project; and

WHEREAS, in response to comments from Village staff, Village consultants and public comments, Cappelli prepared and submitted to the Village Board and Planning Board a supplemental Socio-Economic Analysis, dated August 22, 2005, providing additional information on anticipated Village revenues and costs; and

WHEREAS, the EAC duly considered the CAF, EA, Applications and Petition at its meeting on September 12, 2005, and issued a report to the Village Board recommending that the Village Board adopt the proposed amendments to the PWRD Law and revisions to the LWRP Amendments, and approve the Applications, as well as determined that the Fourth Modified Project is consistent with the policies outlined in the LWRP (as proposed to be amended); and

WHEREAS, the Westchester County Planning Board, pursuant to the Village's referral of the EA, Petition and Applications, submitted a letter to the Village dated September 19, 2005, in which the County Planning Board concluded that the Village had conducted a thorough review of the proposed project that led to the current proposed site plan which addresses previously identified deficiencies, and noted with approval the improved view sheds, reduction in perceived bulk of the buildings, improved public access, and that the proposed project should have a net benefit on school district revenue; and

WHEREAS, the Planning Board duly considered the EA, Petition and Applications at its meetings on August 23 and September 14, 2005, respectively, and issued a report to the Village Board making certain policy and other recommendations, and finding, inter alia, that the proposed changes to the PWRD Law (proposed Local Law 4-2005) further the objectives of the Village's Zoning Law by encouraging the public use and revitalization of the waterfront, and that Cappelli has demonstrated that the Applications conform to the criteria contained in the PWRD Law, as proposed to be amended; and

WHEREAS, Cappelli entered into an agreement with Ginsburg Development Companies, LLC to form a limited liability company to develop the Fourth Modified Project named Harbor Square, LLC (hereinafter referred to as the "Developer"), and the substitution of the limited liability company was approved by the Village under the Development Agreement; and

WHEREAS, written notice was issued notifying the public that a joint public hearing would be held on October 20, 2005 at 7:30 p.m. at the Ossining Community Center Gymnasium, 95 Broadway, Ossining, New York, on the EA, proposed amendments to the

PWRD Law (proposed Local Law No. 4-2005), proposed revisions to the LWRP Amendment, and Applications, at which time the public would have an opportunity to be heard; and

WHEREAS, notice of the joint public hearing was printed in the official newspaper of general circulation in the Village and mailed to all owners of property, which lie within 300 feet of the boundary line of the Fourth Modified Project, to any Village or Town whose boundary is within 500 feet of the Fourth Modified Project, and to the Westchester County Planning Board; and

WHEREAS, the joint public hearing was held on October 20, 2005, at which time all persons attending who wished to be heard with respect to the proposed Fourth Modified Project were given an opportunity to be heard and comments were received by the Village Board; and

WHEREAS, presentations were also made at the October 20, 2005 joint public hearing by the Developer; and

WHEREAS, at the conclusion of the October 20, 2005 joint public hearing, the Village Board closed the public hearing, but received written comments for seven days, until October 27, 2005; and

WHEREAS, the Village Board received and carefully reviewed all of the aforementioned oral and written comments; and

WHEREAS, the Village Board's planning and legal consultants, as well as internal Departments, completed their independent analysis of the EA, Applications, Petition and comments received from the public and the involved and interested agencies, and submitted these analyses to the Village Board; and

WHEREAS, at several Work Sessions of the Village Board held on October 25 and October 31, 2005, respectively, the Village Board discussed the comments made at the joint public hearing, the written submissions from the interested and involved agencies, the written and oral comments submitted by the public, and the independent analyses from its planning and legal consultants and internal Departments; and

WHEREAS, written notice was issued notifying the public that a meeting of the Village Board would be held on November 1, 2005 to make a determination of environmental significance under SEQRA on the Applications, amendments to the PWRD Law and revisions to the LWRP Amendment, take action on the Applications, amendments to the PWRD Law and revisions to the LWRP Amendment, and potentially authorize the execution of this Agreement between the Village and the Applicant; and

WHEREAS, a local law constituting the proposed amendments to the PWRD Law was prepared in final form, and presented on the desks of the Village Trustees seven (7) days (excluding Sunday) prior to the November 1, 2005 Board meeting; and

WHEREAS, at the November 1, 2005 Village Board meeting, the Village Board reviewed and discussed the additional written comments from the public, discussed the Applications, Petition and EA, the EAC and Planning Board reports, comments and submissions from the interested and involved agencies, and the independent analyses prepared by the Village's own consultants and internal departments; and

WHEREAS, on November 1, 2005, the Village Board duly made a negative declaration of environmental significance under SEQRA on the Applications, amendments to the PWRD Law and revisions to the LWRP Amendment, enacted the amendments to the PWRD Law (Local Law No. 4-2005), adopted the revisions to the LWRP Amendment, approved the Applications for the Fourth Modified Project (as so approved, the "Project"), and authorized the execution of this Agreement; and

WHEREAS, on November 22, 2005, the Village Architectural Review Board approved the Fourth Modified Project.

NOW THEREFORE, the Parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

1.1. **Certain Definitions.** The following terms for purposes of this Agreement shall have the meanings set forth or referred to below:

- (a) "Absolute Constraints" shall mean clauses (ii) and (iii) of Unavoidable Delay.
- (b) "Affordable Rental Housing" means residential units, which for a period of not less than twenty-five (25) years, shall be restricted to occupancy by households whose income is less than or equal to eighty percent (80%) of the Westchester County median income as determined by the United States Department of Housing and Urban Development, the rents or carrying charges of which may be met with thirty percent (30%) of the gross household income adjusted only for family size, excluding utilities.
- (c) "Agreement" shall mean this Land Acquisition and Disposition Agreement, as the same may be amended from time to time.
- (d) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).
- (e) "Certificate of Completion" shall have the meaning set forth in Section 10.4(d).
- (f) "Closing Date" shall have the meaning set forth in Section 5.1.
- (g) "Code" shall mean the Code of the Village of Ossining.

- (h) "Commence Construction" shall mean the construction of footings and/or foundations.
- (i) "Construction Commencement Date" shall have the meaning set forth in Section 10.4(b).
- (j) "Construction Completion Date" shall have the meaning set forth in Section 10.4(c).
- (k) "Construction Plans" shall have the meaning set forth in Section 10.3.
- (l) "Cure Intention Notice" shall have the meaning set forth in Section 13.4(d).
- (m) "Developer" shall mean Harbor Square, LLC, and its permitted successors and/or assigns.
- (n) "Developer Documents" shall have the meaning set forth in Section 7.1(c).
- (o) "Developer Opinion" shall have the meaning set forth in Section 5.2(b)(vi).
- (p) "Disposition Parcel" shall mean the portion of the Project Site that shall be conveyed to the Developer pursuant to this Agreement and which is described in Exhibit "A" attached hereto.
- (q) "Downtown Development Fund Council" shall have the meaning set forth in Section 2.1(d).
- (r) "Downtown Development Fund Payment" shall have the meaning set forth in Section 2.1(d).
- (s) "Easement Agreement" shall have the meaning set forth in Section 2.2
- (t) "Environmental Advisory Council" shall have the meaning set forth in Chapter 262 of the Code.
- (u) "Environmental Conditions" means any of the following:
  - (i) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threat of release of any Hazardous Materials (hereinafter defined) in, on, over, under, from or affecting the Project Site (hereinafter defined) or any part thereof whether or not disclosed by any environmental report relative to the Project Site;
  - (ii) any personal injury (including, without limitation, wrongful death, disease or other health condition related to or caused by, in whole or in part, any

Hazardous Materials) or property damage (real or personal) arising out of or relating to any Hazardous Materials in, on, over, under, from or affecting the Project Site or any part thereof whether or not disclosed by any environmental report relative to the Project Site;

- (iii) any Environmental Damages (hereinafter defined) relating to such Hazardous Material whether or not disclosed by any environmental report relative to the Project Site;
- (iv) any violation of the provisions, covenants, representations or warranties hereof or of any Environmental Laws (hereinafter defined), which is based on or in any way related to any Hazardous Materials in, on, over, under, from or affecting the Project Site or any part thereof including, without limitation, the cost of any work performed and materials furnished in order to comply therewith whether or not disclosed by any environmental report relative to the Project Site including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Project Site or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Materials on, in, under or affecting any portion of the Project Site or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Project Site or any surrounding areas; and/or
- (v) any act or omission of Developer, its officers, employees, agents, contractors, invitees, licensees, permittees, or subtenants giving rise to liability under any Environmental Laws either prior to or after the Closing.
- (v) "Environmental Damages" means: (i) all claims, judgment, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of instigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, foreseeable or unforeseeable; (ii) the reasonable fees incurred for the services of attorneys, consultants, contractors, experts, laboratories; and (iii) all other costs incurred in connection with Environmental Conditions.
- (w) "Environmental Laws" means any present or future federal, state or local law, statute, regulation or ordinance and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene, Hazardous Materials, or the environment, including, without limitation, each of the laws, statutes, regulations and ordinances identified in the definition of Hazardous

Materials hereinafter set forth, as enacted as of the date hereof and as hereafter amended or supplemented, and any permit, authorization or order thereunder.

- (x) "Environmental Procedures" shall mean all procedures mandated under SEQRA, and all rules and regulations promulgated under such statute.
- (y) "Final and Unappealable" shall mean final agency action that has not been challenged in a court within the applicable statute of limitations of the taking of such action, or the final disposition of any judicial action challenging such final agency action that has been commenced within the applicable statute of limitation period.
- (z) "Findings" shall have the meaning set forth in the fiftieth (50<sup>th</sup>) recital of this Agreement.
- (aa) "Governmental Approvals" means the Village Approvals (hereinafter defined) and all other necessary and discretionary federal, state, county and local actions, permits and approvals for the development and commencement of construction of the Project (hereinafter defined) in accordance with the relevant terms and conditions herein.
- (bb) "Governmental Authority" means the federal government, the State of New York or any political subdivision thereof, the Village of Ossining, and any agency, board, commission or department of any of them.
- (cc) "Hazardous Materials" means and includes: (i) those elements, wastes, materials, substances or compounds identified or regulated as hazardous or toxic pursuant to the CERCLA (42 U.S.C. §§ 9601 et seq. and 40 CFR §§ 302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq. and 40 CFR §§ 116.1 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 1101 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 et seq.), the New York State Navigation Law, all applicable or analogous state laws, any amendments thereto, and the regulations promulgated pursuant to said laws, all as amended from time to time, relating to or affecting the Project Site; (ii) any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents or any other substances or materials which are identified by or regulated by Environmental Laws, on, in, under or affecting all or any portion of the Project Site or any surrounding areas; and (iii) any substances now or hereafter defined as or

included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," or "toxic substances" under any applicable Environmental Laws.

- (dd) "Institutional Lender" shall have the meaning set forth in Section 13.1(a).
- (ee) "License Agreement" shall mean that certain License Agreement with respect to the performance by Developer of the Remedial Work made between the Parties, dated the same date as this Agreement and executed simultaneously herewith. (Exhibit "L")
- (ff) "Minority Participation Policy" shall have the meaning set forth in Section 2.3.
- (gg) "Notice of Default" shall have the meaning set forth in Section 14.1(a).
- (hh) "Parties" shall mean the signatories to this Agreement.
- (ii) "Permitted Exceptions" shall have the meaning set forth in Section 4.1.
- (jj) "Principal" shall have the meaning set forth in Section 12.1.
- (kk) "Project" shall refer to a development in accordance with the Site Plan (hereinafter defined), which shall include a maximum of one hundred fifty (150) residential units (which may be either rental units and/or condominium units, as Developer may elect in its sole discretion); 10,000 square feet of restaurant/retail space in a separate one-story building; a residential parking ratio of 1.5 residential parking spaces per residential unit; forty-five (45) non-residential parking spaces; 2.73 acres of open space and all Public Infrastructure and Public Improvements on the Publicly Accessible Area (hereinafter defined), and the Village Land (hereinafter defined), as approved by the Village Board.
- (ll) "Project Completion Date" shall mean the date on which the last of the Certificates of Completion to be issued pursuant to this Agreement is issued to Developer.
- (mm) "Project Site" shall have the meaning set forth in Section 2.1(a).
- (nn) "Promenade" shall mean the public riverfront boardwalk that shall be developed by Developer at Developer's expense on the Village Land (hereinafter defined) in accordance with the Site Plan (hereinafter defined).
- (oo) "Public Infrastructure" shall mean the public sanitary sewer, water and stormwater management/drainage improvements shown on the Site Plan (hereinafter defined) and which are to be owned by the Governmental Authority having jurisdiction thereof.

- (pp) "Public Improvements" shall have the meaning set forth in Section 2.5(h).
- (qq) "Public Parking" shall have the meaning set forth in Section 16.1.
- (rr) "Publicly Accessible Area" shall mean the portion of the Disposition Parcel, including Public Parking, which shall be accessible to the public, subject to the terms and conditions of this Agreement and the Easement Agreement, and which is described in Exhibit "B" attached hereto.
- (ss) "Purchase Price" shall have the meaning set forth in Section 3.1.
- (tt) "Recognized Mortgage" shall have the meaning set forth in Section 13.1(c).
- (uu) "Recognized Mortgagee" shall have the meaning set forth in Section 13.1(d).
- (vv) "Remedial Action Plan" shall collectively mean: (i) that certain Remedial Action Plan dated March 7, 2002 and that certain Natural Attenuation Groundwater Monitoring Plan dated July 2002, both prepared by C A Rich Consultants, Inc. in connection with New York State Department of Environmental Conservation Spill No. 8705664, and which were approved by the New York State Department of Environmental Conservation on July 30, 2002 by letter from Peter J. DeCicco, Environmental Geologist 2, to Michael D. Zarin, Village special counsel; and (ii) "Exhibit A" to the License Agreement.
- (ww) "Remedial Work" shall have the meaning set forth in Section 11.2(a).
- (xx) "SEQRA" means the New York State Environmental Quality Review Act, as amended, and the regulations promulgated thereunder.
- (yy) "Site Plan" shall mean the amended site development plan of the Project approved by the Village Board on November 1, 2005, and which consists of the maps, plans and drawings identified in Exhibit "C" attached hereto.
- (zz) "Tax Code" shall have the meaning set forth in Section 5.2(a)(vii).
- (aaa) "Title Company" shall mean a New York State licensed title insurance company selected by Developer.
- (bbb) "Unavoidable Delay" means any delay, obstruction or interference resulting from any act or event whether affecting the Project, the Village or Developer, which has a material adverse effect on such party's rights or duties, provided such act or event is beyond the reasonable control of such party after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of such party and/or could not have been prevented by reasonable actions on such party's part (and such party shall have notified the other party



herein not later than ten (10) days after the occurrence of any Unavoidable Delay enumerated in (i) through (vii) below and within a reasonable time for other Unavoidable Delays), including, but not limited to, delay, obstruction, or interference resulting from:

- (i) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, riot or civil disturbance;
- (ii) any legal proceeding commenced by any third party seeking judicial review of this Agreement and/or any Governmental Approvals commenced within four (4) months of the issuance thereof, and any restraint of law (e.g., injunctions, court or administrative orders, or legal moratorium imposed by a court, or administrative or Governmental Authority);
- (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Project Site, which are required for the construction of the Project or for other obligations of Developer;
- (iv) any unexpected or unforeseen subsurface condition at the construction site inconsistent with typical background conditions of a similar site, which shall prevent construction of, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for, the Project, such determination to be made by a qualified engineer;
- (v) any Environmental Conditions which are not identified in the Remedial Action Plan;
- (vi) strikes, work stoppages or other substantial labor disputes;
- (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by Unavoidable Delay and could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefor;
- (viii) Village fault with respect to Developer, and Developer fault with respect to the Village, whether or not the Village fault or Developer fault is caused by negligent or willful acts or omissions, provided the party asserting a delaying condition hereunder shall have timely complied with requests and requirements of any Governmental Authority.

In no event shall Developer's financial condition or inability to obtain funding or financing constitute an "Unavoidable Delay."

- (ddd) "Village" means the Village of Ossining, New York.
- (eee) "Village Approvals" means all approvals required from the Village and any Village board, agency or department in order for Developer to obtain final discretionary land use approval for the Project from the Village, including but not limited to, any amendments to the Village Zoning Law and/or LWRP, amended site development plan approval and amended special permit approval, issuance of any determinations and/or findings required under SEQRA and all other determinations in connection with the Project made under the Environmental Procedures, but excluding any demolition, excavation/foundation, building or similar permits to be issued by the Village Building Department or any other department of the Village. The Village Approvals are identified in Exhibit "D" attached hereto.
- (fff) "Village Board" means the Village of Ossining Board of Trustees.
- (ggg) "Village Opinion" shall have the meaning set forth in Section 5.2(a)(viii).
- (hhh) "Village Land" shall mean the portion of the Project Site, including Harbor Point Park, the fee title to which is not to be conveyed to Developer under this Agreement and shall be retained by the Village, and which is described in Exhibit "E" attached hereto.
- (iii) "Waterfront Plan" shall mean the Village of Ossining Main Street and Waterfront Plan prepared by Christopher Chadbourne & Associates dated September 1994, as revised March 1995, the Village of Ossining Local Waterfront Revitalization Program adopted on July 2, 1991, and approved on July 11, 1991, and the Zoning Law of the Village of Ossining, revised December 1990.

## ARTICLE II

### SALE AND PURCHASE; PROJECT

#### **2.1. The Project Site.**

(a) The "Project Site" means the Disposition Parcel and the Village Land; provided, however, that all lands underwater or below the mean high tide water line are not included in the Project Site nor are part of this Agreement. The Project Site consists of the land bounded by Westerly Road on the east, Sing Sing Kill on the north, the Hudson River on the west and the Ossining Boat and Canoe Club on the south.

(b) For the Purchase Price and subject to all the terms and conditions hereinafter set forth, and in accordance with the Site Plan, as it is approved by the Village, Developer agrees to purchase from the Village, and the Village agrees to sell and convey to the Developer for construction of the Project fee simple title of the Village in and to the Disposition Parcel.

(c) Developer shall cooperate with the Village in the granting of any and all easements, rights of way, or other rights and interests to others as are necessary, among other things, to ensure permanent public access to the Publicly Accessible Area and to the Village Land and in connection with any other requirements of this Agreement. The Village shall cooperate with Developer with respect to the granting of easements, rights of way, or other rights or interests to others for the benefit of the Project as are reasonably necessary to enable Developer to construct the Public Infrastructure and Public Improvements.

(d) Downtown Development. Developer and the Village believe that the public good will be enhanced by improvements to downtown Ossining, and that such improvements will facilitate the objectives of the Waterfront Plan and the Site Plan, which include public access to and use of the Ossining waterfront. Developer agrees to work with the Greater Ossining Chamber of Commerce, and other community organizations designated by the Village to assist in implementing other downtown redevelopment projects. In furtherance of these objectives, Developer further agrees that, upon execution of this Agreement, it shall pay the nonrefundable sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to the Village, which amount shall be credited against the Purchase Price, and which is to be deposited in a dedicated development fund to provide low interest loans for home improvements in the Downtown area ("Downtown Development Fund Payment"), or to fund other projects committed to improving the Downtown Area. The Downtown Development Fund Payment shall be administered by a three-person council ("Downtown Development Fund Council") or other similar governance body. Two members of the Downtown Development Fund Council shall be nominated by the Village, and one member shall be nominated by Developer. The Downtown Development Fund Council shall be responsible for administering the Downtown Development Fund.

2.2. Easements And Reservations Against The Disposition Parcel. At the Closing, there shall be recorded against the Disposition Parcel an Easement Agreement (the "Easement Agreement") containing the mutually agreed reservations and easements set forth in this Agreement, which shall specifically reserve to the Village, among other rights and interests, appropriate easements, covenants and restrictions ensuring permanent public access and use of the Publicly Accessible Area and the Public Parking, and maintenance by the Developer of the Publicly Accessible Area, Village Land and Public Parking areas in accordance with the terms and conditions of this Agreement and the Easement Agreement and easements to the Village (or the appropriate Governmental Authority) for purposes of pedestrian and vehicular ingress and egress to the Project Site for the purposes of installation, construction, repair, replacement, testing, inspection and maintenance of the Public Improvements on the Village Land and all Public Infrastructure (including, without limitation, sewer, water, and stormwater management and drainage facilities). The Easement Agreement to be recorded at Closing is attached to this Agreement as Exhibit "F".

### 2.3. Hiring.

(a) Intent of the Parties. The Village of Ossining is privileged to have a diverse community. This diversity is what makes the community so attractive to its residents and visitors. This diversity is acknowledged by the Village, encouraging all contractors and

developers selected to do business with the Village to make their onsite workforce a reflection of the community. Developer shall commit to and maximize participation in the Ossining First Hiring Program, as well as comply with the spirit of Local County Law No. 27-1997 ("Minority Participation Policy") with respect to all construction and ongoing management and maintenance activities at the Project Site.

(b) Hiring. The Developer shall also:

- (i) implement a proactive equal employment opportunity policy for all facets of the pre-construction, and on-going management and maintenance of the Project such that all persons regardless of race, color, sexual orientation, national origin, creed, gender, age or disability will receive fair and unbiased consideration for jobs that they are qualified to perform; and
- (ii) advertise in local newspapers, particularly in those that focus on activities of African-Americans, Hispanics, other minorities and women, for positions it needs to fill, including employees, sub-contractors, consultants and vendors, which may be needed for all current and future phases of the Project; and
- (iii) submit an quarterly report to the Village, detailing the efforts and results of said equal employment policy, as well as meet with Village officials at mutually agreeable times to discuss said reports; and
- (iv) designate a person within its corporate structure to be responsible for implementation of the above Minority Participation Policy; and
- (v) employ and maintain at the Project Site labor covered principally under collective bargaining and/or project labor agreements during construction and remediation of the Project Site.

2.4. **Cooperation By Village.** The Village shall, to the extent permitted by law, promptly initiate within any applicable statutory time limits and pursue in good faith and with due diligence, all necessary procedures pertaining to applications or requests made by Developer for actions, permits and approvals necessary to implement the terms and conditions herein, which are within the jurisdiction of the Village or other Village agencies, boards and departments, subject to any required compliance with the provisions of SEQRA. The Village shall not be responsible for the failure of any Governmental Authority to approve such applications or any part thereof, or any modifications to or alterations of the Project required as a result of the Environmental Procedures. The Village shall in good faith cooperate with Developer to the extent permitted by law in any manner necessary in furtherance of the Project, including, but not limited to, supporting and cooperating with Developer in seeking governmental grants and other funding related to the construction of the Project and/or Developer's obligations in this Agreement, provided, however, that the Village shall not be obligated to accept any grant or financial assistance which (a) requires matching funding or other

financial contributions from the Village unless the Developer agrees to underwrite such contributions, or (b) diverts Community Development Block Grants from other designated Village projects.

**2.5. The Village Land And The Publicly Accessible Area.**

(a) Intent of the Parties. Developer recognizes that a fundamental intent of the Parties hereto is to create permanent public access to and use of the waterfront. Consequently, Developer agrees to take the Disposition Parcel subject to the terms and conditions set forth below.

(b) The Village Land. Developer acknowledges and agrees that the Village Land, whether or not the same is formally dedicated as public park land within the meaning of State law, shall be used by the Village for public park-like purposes and to provide permanent public access to the waterfront. The Village agrees that public access to and use of the Village Land including, but not limited to, use for Special Events (as hereinafter defined)) shall permanently and in all events be subject to all laws, codes, regulations and/or rules of the Village that are from time to time applicable generally to the use of Village owned parkland (the "Village Park Regulations"). Subject to the foregoing and to Section 2.5(d), below, the Village shall have the exclusive right in its sole discretion to use any and all Village Land as it deems suitable, including leasing and licensing to private and/or non-profit entities or individuals for recreational uses consistent with other comparable Village owned parks, provided all such uses comply with the Village Park Regulations, and any and all health, safety and welfare regulations for such events, and are consistent with the use of the Village Land as an urban public waterfront park. The Village shall provide Developer and its successors and/or assigns with reasonable notice, but no fewer than ten (10) days, in advance of any leases or licenses granted with respect to the Village Land. Notwithstanding any provision of this Agreement, no portion of the Project Site except the portion of the Village Land which as of the date hereof constitutes Harbor Point Park shall be deemed by this Agreement to be dedicated to public use as a public park.

(c) The Publicly Accessible Area. The Publicly Accessible Area is the portion of the Project Site specifically described on Exhibit "B" to this Agreement.

(d) Utilization of the Village Land and the Publicly Accessible Area. The Village and Developer, for itself and its successors and assigns, agree that the Village Land and the Publicly Accessible Area shall be subject to the Village Park Regulations and accessible to and useable by the public during the hours permitted under the Village Park Regulations – i.e., closed at dusk, -, except for passive walking along the waterfront on the Promenade until 10:00 p.m. The following uses shall be prohibited in the Village Land and the Publicly Accessible Area: (i) amplified speech or music; (ii) ball playing or similar sporting activities, (iii) alcoholic beverages; and (iv) open fires or cooking of any kind, except such uses may be permitted in connection with Special Events as defined below. The Developer shall not take any actions to discourage the public from using the Publicly Accessible Area. The Village shall post notice indicating that the aforementioned activities are prohibited on the Village Land and the Publicly Accessible Area. The Village shall have the right in its reasonable discretion to conduct special events, including, but not limited to, amplified or non-amplified music concerts, farmers'

markets, Fourth of July celebrations, craft fairs and political events (the "Special Events") on the Village Land and the Publicly Accessible Area, provided the Village shall give Developer and/or its successors or assigns reasonable written notice, but no fewer than ten (10) days, in advance of any scheduled Special Event.

(e) Private Events on the Publicly Accessible Area. Nothing herein is intended to prohibit Developer-sponsored private events from taking place on the Publicly Accessible Area, subject to Village Park Regulations; provided, however, that events on the Publicly Accessible Area will not unreasonably interfere or conflict with any Village-sponsored events on the Village Land or Publicly Accessible Area.

(f) Changes in Use. Developer may not materially modify or change any use of the Publicly Accessible Area without the express written consent of the Village. Developer shall not in any way limit or interfere with the public access and use of the Publicly Accessible Area and the Village Land except in accordance with the terms and conditions of this Agreement.

(g) Maintenance of the Publicly Accessible Area and the Village Land. Developer understands that the Project and the Publicly Accessible Area and the Village Land are intended to be a gateway to and a magnet for visitors to the Village and its waterfront, and therefore shall take care of, keep and maintain, at its sole cost and expense, including, performing general, routine maintenance of, and repair to, the Publicly Accessible Area, the Village Land and the Public Improvements to be constructed thereon consistent with other first-class developments of a similar type. The Publicly Accessible Area and Village Land shall be maintained by the Developer to the same standards as the private portions of the Project Site on which public access is not permitted. Cleaning up after any Special Events held on the Publicly Accessible Area and/or the Village Land shall be the sole responsibility of the sponsor of the event. The Village shall notify Developer and/or its agent of any failure to maintain the Publicly Accessible Area according to the standards set forth above.

The Developer shall, at its sole cost and expense, restore and/or replace the Public Improvements on the Publicly Accessible Area and the Village Land if the same are materially damaged or destroyed as a result of passage of time, casualty or any other cause. Notwithstanding the foregoing and any provisions of this Agreement, from and after the expiration of five (5) years after the Project Completion Date, the Village shall, at its sole cost and expense, be solely liable for the restoration and/or replacement of the Public Improvements on the Village Land if the same are materially damaged or destroyed as a result of passage of time, casualty or any other cause.

Notwithstanding anything to the contrary contained herein, should the Developer, its successors or assigns fail or refuse to effectuate any required general, routine maintenance of, and/or repair to, the Publicly Accessible Area, Village Land and/or Public Improvements within ten (10) days after written notice of such failure has been given by the Village to Developer, then the Village shall have the right to perform the maintenance and/or repair; provided, however, that the Village shall not be required to give any notice to Developer prior to remedying any condition that threatens the public health or safety. The Village shall be entitled to seek reimbursement for the cost and expense of any work performed pursuant to this subsection (d) in arbitration in accordance with Article XVIII of this Agreement.

(h) The Public Improvements. Developer agrees that it shall, at its expense and in accordance with the Site Plan, furnish the Publicly Accessible Area and the Village Land with the amenities shown on the Site Plan, including, but not limited to, benches, playground equipment, trash receptacles, beach, grass areas, sidewalks, kayak rental "shack", and fishing piers and lighting, and shall construct and install on the Publicly Accessible Area and the Village Land the public improvements shown on the Site Plan (collectively, the "Public Improvements"), including, but not limited to, indoor restroom facilities at the kayak shack to be open during all hours that the Publicly Accessible Area and the Village Land are open, and the Promenade on the Village Land. The Public Improvements are more specifically identified in Exhibit "G" attached hereto.

(i) The Project. Developer may not modify, change or alter any use or aspect of the Project, particularly with regard to the Publicly Accessible Area and Village Land, as set forth in this Agreement or the Site Plan approved by the Village, without the express written consent of the Village, and all plans, drawings or other documents submitted by Developer in connection with the Project shall be subject to review by the Village's architectural consultant in order to confirm that such documents conform to the modified Site Plan as approved by the Village.

(j) Village Recreation Advisory Board. A representative of the Developer or its successors in interest (which shall be deemed to include any condominium association) shall be appointed to the Village of Ossining Recreation Advisory Board ("Advisory Board") in order to represent the Developer and/or residential interests in discussions regarding uses and Special Events in connection with the Village Land and Publicly Accessible Area.

2.6. Retail And Commercial Uses. Developer and the Village agree to encourage broad participation and enjoyment by the general public at the waterfront, and thus, the types of retail and commercial uses at the Project Site must include uses that would be likely to attract and be used by the general public and not exclusively the residents of the Project Site. Types of uses that would potentially attract and be used by the general public include, but are not limited to, coffee shops, bicycle rentals, clothing stores, bookstores, shoe stores, gift shops, ice cream/frozen yogurt shops, restaurants, theaters and/or art galleries. Developer shall not permit retail and commercial uses that would be targeted exclusively or principally for the residents of the Project Site. The uses in the southern 10,000 square foot one-story restaurant/retail building (the "Southern Building") are important to the Village and the Developer for encouraging the use by the general public of the waterfront. The Southern Building shall contain a quality restaurant with a minimum of 5,000 square feet to encourage this use and participation. A copy of this Agreement and the Easement Agreement must be attached to any and all leases, agreements or deeds for or affecting the Southern Building and any retail or commercial leases for any portion of the Disposition Parcel. This Section shall survive the Closing, the Project Completion Date and the termination of this Agreement.

2.7. Affordable Housing. Developer and the Village recognize the need for Affordable Housing in the Village. In furtherance of that objective, Developer shall pay the Village One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Affordable Housing Contribution") in the following manner: (i) Seven Hundred Fifty Thousand Dollars

(\$750,000.00) upon the Closing (as hereinafter defined) set forth in Section 5.1 hereof, and (ii) Seven Hundred Fifty Thousand Dollars (\$750,000.00) on the date which is the earlier of (a) the date that the condominium plan for the Project becomes effective pursuant to State regulation (no condominium residential unit is permitted to close until such plan becomes legally effective), or (b) two years from the date a final certificate of occupancy is granted for the Project, unless prior to or on such date the Developer declares to the Village in writing that the entire Project will be rental; in such case ten per cent (10%) of the total number of residential units in the Project shall be set aside as Affordable Rental Housing (which shall prioritize Village and Town of Ossining employees, as well as Village and Town of Ossining Volunteer Firefighters and Volunteer Ambulance Corps Members), and any Affordable Housing Contribution paid by the Developer to the Village shall be reimbursed to the Developer. Once the Developer designates the Project as a rental Project as set forth herein, the Developer shall be required to retain ten percent (10%) of the total number of residential units in the Project as Affordable Rental Housing, regardless if any residential units are subsequently sold as a condominium unit; provided, however, that the retention of the Affordable Rental Housing shall be in lieu of the Affordable Housing Fee and any other similar fee-in-lieu of affordable housing which may then be imposed by the Village on residential development. The Village shall administer the resulting fund in its sole discretion; provided, however, that all such funds shall be used to further the Village's affordable housing objectives. In the event that the Developer designates the Project as a rental Project as set forth herein, the Developer shall ensure that a copy of this Agreement and the Easement Agreement are made available to all tenants of the Project.

2.8. **Covenants Binding Upon Successors In Interest.** Developer's obligations under this Section 2, including, but not limited to, the preservation of permanent public access to, and the maintenance of, the Publicly Accessible Area and Village Land, shall be contained in the Easement Agreement and shall be covenants running with the land and 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, to the fullest extent permitted by law and equity, binding to and for the benefit and in favor of the Village and enforceable by the Village against Developer, its successors and/or assigns to the Disposition Parcel or any part thereof or any interest therein. Express language to be mutually agreed upon by Developer and Village shall be incorporated into any and all deeds, leases, licenses, purchase, rental or any other agreements by or between Developer and any successor in interest to whom Developer conveys a right or interest to, a portion of, or use of the Disposition Parcel, providing them with notice of the Easement Agreement, this Agreement and the rights, obligations, limitations and restrictions thereunder. Such language must reference the Easement Agreement, this Agreement and Developer's obligations regarding the nature and use of the Publicly Accessible Area. This Section 2.8 shall survive the Closing, the Project Completion Date and termination of this Agreement.

2.9. **Designated Agents And Consultants.**

(a) **Developer Designation.** Developer and its successor and/or assigns shall designate an agent with whom the Village can discuss programmatic and maintenance decisions affecting the Project and the Project Site and to whom the Village can send any notification required by this Agreement. Developer's agent shall be Louis R. Cappelli. Developer's



successors and/or assigns shall notify the Village of the name, address and phone number of a designated agent and of any subsequent change to the designation. The agent or the agent's designated representative must be accessible at all hours of the day, seven days a week. Developer and/or its agent shall meet with the Village on a regular basis to review Developer's obligations under this Agreement with regard to the maintenance of the Publicly Accessible Area.

(b) Village Architectural Consultant. The Village shall appoint/hire, at its sole discretion, an architectural consultant to assist it in the review of all plans, drawings and other documents relating to the design, engineering and construction of the Project to ensure that it conforms to this Agreement and all other applicable Village Approvals and Village laws. The Developer shall reimburse the Village for the reasonable costs incurred by the Village for the actual costs of such architectural consultant up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00); provided, however, that such limitation shall not restrict the Village's right to engage the Architectural Consultant for additional services at the Village's own expense.

#### **2.10. Letter Of Credit And Performance Bond.**

(a) Developer shall deliver (and in the case of the Letter of Credit (as hereinafter defined), has delivered) to the Village the following:

(i) As required by the Development Agreement dated March 18, 1999, as amended and restated to date, Developer has delivered to the Village, and the Village is currently the beneficiary of, an irrevocable letter of credit (the "Letter of Credit") in the amount of Three Hundred Thousand Dollars (\$300,000.00). The Village and Developer agree that upon full execution of this Agreement, the Letter of Credit shall serve to secure liquidated damages in the event that Developer fails to timely commence and thereafter diligently perform the Remedial Work (but only to the extent that Developer has not terminated this Agreement pursuant to Section 11.2(c) hereof), or fails to close title to the Disposition Parcel on the Closing Date, and any such default remains uncured beyond any applicable notice and/or grace period (any such uncured default, a "Developer Closing Default"). The Letter of Credit shall be released by the Village and returned to Developer at the Closing; and

(ii) At the Closing, a performance bond (the "Performance Bond") in favor of the Village from Developer and/or Developer's general contractor which shall secure the post-Closing performance of the Remedial Work, if any, and the construction of the Public Improvements and Public Infrastructure in accordance with this Agreement; and

(iii) At the Closing, a bond from a reputable surety reasonably satisfactory to the Village in an amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Liquidated Damages Bond") to secure Completion Damages (as hereinafter defined) for which Developer may be liable to the Village in accordance with Section 10.4(e) of this Agreement.

(b) Letter of Credit. The Letter of Credit shall: (i) be irrevocable; (ii) be issued by an FDIC insured banking corporation, investment bank or other financial institution having capital of at least \$500 million dollars (\$500,000,000.00) and an office in the metropolitan New York area; (iii) name the Village as the beneficiary; and (iv) authorize the Village to draw upon the Letter of Credit in the event of Developer Closing Default under this Agreement by written demand accompanied by a statement executed by the Mayor of the Village and the Village Manager addressed to the issuer of the Letter of Credit certifying that the Village is entitled to draw upon the Letter of Credit in accordance with the terms of this Agreement.

(c) Performance and Liquidated Damages Bonds. (i) Developer shall bear all costs associated with providing the Village with the required Performance and Liquidated Damages Bonds; (ii) the Performance Bond shall be in substance similar to AIA Document A312; and (iii) the Liquidated Damages Bond shall be in form and substance reasonably satisfactory to the Village Attorney. The Performance and Liquidated Damages Bonds shall further reflect the obligation of the surety to discharge its obligations under said Bonds upon notice in writing from the Village that Developer is in default, has failed to cure that default within the meaning of Section 14.1(a), and has not cured that default within the permitted time period, and shall be issued by a reputable surety licensed to do business in New York State and reasonably satisfactory to the Village.

(d) Developer shall pay all costs and fees in connection with obtaining and maintaining the Letter of Credit and Performance and Liquidated Damages Bonds.

(e) The Letter of Credit and the Performance and Liquidated Damages Bonds must be reasonably satisfactory in terms and form to the Village Attorney of the Village.

2.11 **Survival.** The provisions of Sections 2.5, 2.6, 2.7 and 2.8 shall survive the Closing, the Project Completion Date and the termination of this Agreement.

2.12 **Arbitration.** Any dispute with respect to Sections 2.3, 2.4, 2.5, 2.6 and 2.7 shall be subject to arbitration in accordance with Article XVIII of this Agreement.

### ARTICLE III

#### PURCHASE PRICE

##### 3.1. **Purchase Price.**

(a) Consideration. Subject to all the terms and conditions herein, Developer, as consideration for the conveyance of the Disposition Parcel, shall pay the Village on the Closing Date the non-reimbursable amount of Two Million Two Hundred Seventy-Nine Thousand Dollars (\$2,279,000.00) (the "Purchase Price"). At Closing, Developer shall receive a credit against the Purchase Price in the amount of the Downtown Development Fund Payment. In addition, Developer will build, provide and maintain the Public Improvements in accordance with this Agreement and the Easement Agreement.

3.2. **Payment Of Purchase Price.** At the Closing, Developer shall pay to the Village the Purchase Price by certified check or checks payable to the order of the Village and/or the order of such persons or entities as the Village shall direct in writing or by wire transfer to an account or accounts designated by the Village, as the Village shall elect.

3.3. **Allocation Of Purchase Price.** The parties hereto agree that no part of the Purchase Price paid hereunder has been paid by Developer for any personal property. However, if any federal, State or local Governmental Authority deems any part of the Purchase Price to have been paid for any personal property, Developer shall pay at the Closing, or subsequent thereto, the amount of any sales tax payable in connection therewith. The provisions of this Section 3.3 shall survive the Closing, the Project Completion Date and the termination of this Agreement.

#### ARTICLE IV

##### CONDITIONS OF TITLE

4.1. **Permitted Exceptions.** At the Closing, the Village shall convey and transfer the Disposition Parcel to Developer, subject only to the following (the "Permitted Exceptions"):

(i) real estate taxes and/or assessments, and water and sewer rents or charges which are a lien thereon as of the Closing Date;

(ii) any state of facts that an accurate survey may show, provided the same do not materially affect Developer's ability to construct or operate the Project;

(iii) covenants, restrictions, easements, reservations and agreements of record, provided the same will not materially affect Developer's ability to construct, operate or maintain the Project or result in a reverter or forfeiture of title;

(iv) rights, if any, now or hereafter acquired by any utility company to erect, maintain and operate lines, wires, poles, cables, distribution boxes, and other facilities and equipment, in, over and upon the Disposition Parcel, provided the same do not materially affect Developer's ability to construct, operate or maintain the Project;

(v) easements that affect any land in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Disposition Parcel, provided the same do not materially affect the Developer's ability to construct, operate or maintain the Project;

(vi) the Easement Agreement;

(vii) rights and easements, now or hereafter acquired for the installation, maintenance and replacement of water mains and lines and sewer mains and lines, and facilities and equipment, in, over and upon the Disposition Parcel, provided the same do not materially affect Developer's ability to construct, operate or maintain the Project;

(viii) building, land subdivision, zoning, ownership, operation, use and occupancy restrictions, ordinances, and regulations affecting the Disposition Parcel, and the violations of or non-compliance with any of the foregoing, provided the same do not materially affect Developer's ability to construct, operate or maintain the Project;

(ix) if all or any portion of the Disposition Parcel is shown on a map filed in the Office of the Clerk of Westchester County (Division of Land Records) (the "Clerk's Office"), then any notes, easements, restrictions, legends and state of facts shown on such filed map or maps, provided the same do not materially affect Developer's ability to construct, operate or maintain the Project;

(x) variations between fences, hedges, shrubs, trees and record lines of title, provided the same do not materially affect Developer's ability to construct, operate or maintain the Project;

(xi) this Agreement;

(xii) Recognized Mortgages; and

(xiii) regulations and controls on the use of the Disposition Parcel and Project Site as set forth in the Site Plan and the Village Approvals, as amended from time to time.

4.2. **Covenants Run With The Land.** Developer's obligations shall be covenants running with the land and 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, to the fullest extent permitted by law and equity, binding for the benefit of the Village and enforceable by the Village against Developer and its successors and/or assigns to or by the Project Site or any part thereof or any interest therein, including the successor owners of the Southern Building. During the construction of the Project, Developer shall cause the Village to be named as an additional insured as the Village's interest may appear on any policies of liability insurance, which Developer shall maintain during such construction.

## **ARTICLE V**

### **THE CLOSING**

5.1. **The Closing.** Unless this Agreement is terminated by Developer pursuant to Section 11.2(c), the closing of title to the Disposition Parcel (the "Closing") shall occur on the date which is thirty (30) days after the date on which the last of all of the Village Approvals has become Final and Unappealable (the "Closing Date"). The Closing shall occur at the Village Hall located at 16 Croton Avenue, Ossining, New York, or another location mutually acceptable to the parties. The parties agree that the obligations of the Village and Developer as to the Closing Date are not of the essence and are subject to Absolute Constraints and Unavoidable Delays.

At the Closing the Village shall convey the Disposition Parcel to Developer subject to this Agreement, the Easement Agreement and those surviving provisions of the License

Agreement.

**5.2. Deliveries At Closing.**

(a) At the Closing and as a condition of Developer's obligations hereunder, the Village shall execute, acknowledge (as necessary) and deliver to Developer, the following:

- (i) a bargain and sale deed with covenants against grantor's acts in proper statutory form for recording, and including any right, title or interest of the Village to any street or roads adjoining the Disposition Parcel (or which are required for the construction of the Public Improvements) which have been abandoned pursuant to the Village Approvals;
- (ii) Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate for the Disposition Parcel, such transfer taxes to be paid by the Developer;
- (iii) Real Property Transfer Report;
- (iv) Equalization and Assessment Form;
- (v) such affidavits and other documents as the Title Company customarily requires in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the name of the Village and to insure title as required by the terms and conditions of this Agreement;
- (vi) a certificate or any other documentation from the appropriate officers of the Village as the Title Company customarily requires establishing the authority of the Village to convey the Disposition Parcel, and the authorizing resolutions of the Village in effect as of the Closing Date to enter into this Agreement and perform the obligations contemplated hereunder;
- (vii) such federal income tax reports respecting the sale of the portion of the Project Site which is the subject of the Closing as are required by the Internal Revenue Code of 1986, as the same has been amended (the "Tax Code"). It shall be the responsibility of Developer's counsel to file a Form 1099-B with the Internal Revenue Service if such filing is required by law;
- (viii) an opinion of counsel to the Village in form and substance as set forth in Exhibit "H" attached hereto and made a part hereof (the "Village Opinion"); and
- (ix) any other documents required by this Agreement or reasonably required by the Recognized Mortgagee to be delivered by the Village, provided the same are not inconsistent with the terms and provision of this Agreement.

(b) At the Closing, and as a condition to the Village's obligations hereunder, Developer shall execute, acknowledge (as necessary) and deliver to the Village, the following:

- (i) the Purchase Price required pursuant to Section 3.1 hereof subject to credits as provided herein;
- (ii) Developer shall duly complete the Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate for the Disposition Parcel;
- (iii) copies of the organizational documents of Developer certified to be true and correct copies by the appropriate managing member(s) of Developer, certificates of incumbency of the managing member(s) and the authorizing resolutions of Developer, in effect as of the date of the Closing Date to enter into this Agreement and perform the obligations contemplated hereunder; provided, however such documents must be reasonably satisfactory in form and substance to the Village and its legal counsel;
- (iv) Good Standing Certificate of Developer (and the managing member of the Developer if a limited liability company) in the jurisdiction of the Developer's organization and the State of New York;
- (v) the Performance and Liquidated Damages Bonds required by this Agreement;
- (vi) an opinion of counsel to Developer in form and substance as set forth in Exhibit "I" attached hereto (the "Developer Opinion");
- (vii) the Easement Agreement, in proper statutory form for recording;
- (viii) Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate for the Disposition Parcel;
- (ix) a FIRPTA Affidavit certifying that Developer is not a "foreign person" as defined in Section 1445 of the Tax Code;
- (x) such affidavits and other documents as the Title Company customarily requires in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the name of Developer and to insure title as required by the terms and conditions of this Agreement;
- (xi) such federal income tax reports respecting the sale of the Disposition Parcel as are required by the Tax Code. It shall be the responsibility of Developer's counsel to file a Form 1099-B with the Internal Revenue Service if such filing is required by law;

(xii) the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00), representing one-half of the Affordable Housing Fee provided for in Section 2.7 herein; and

(xiii) any other documents and funds required by this Agreement to be delivered by Developer.

5.3. **Recordation Of Conveyance Documents: Transfer Tax.** Developer shall promptly record the deed to the Developer for the Disposition Parcel and, at the request of the Village, this Agreement and the Easement Agreement, in the Clerk's Office. Developer shall pay all costs of such recording. Developer shall be responsible for all transfer taxes due in connection with the conveyance of the Disposition Parcel, including, without limitation, any New York State Real Property Transfer Tax.

5.4. **Apportionments.** Special benefit assessments paid by the Village to others, if any, shall be apportioned as of the Closing Date.

## ARTICLE VI

### CONDITIONS PRECEDENT TO THE CLOSING

6.1. **Conditions To Obligations Of The Village.** The obligation of the Village to consummate the Closing and convey the Disposition Parcel to Developer is subject to the fulfillment of each of the items listed below, at or before the Closing Date, any one or more of which may be waived by the Village, in its sole discretion:

(i) All representations and warranties made by Developer in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by the Developer on and as of such date, and the Village shall have received a certificate dated the Closing Date and signed by a duly authorized representative of Developer to that effect;

(ii) Developer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and the Village shall have received a certificate dated the Closing Date and signed by a duly authorized representative of the Developer to that effect;

(iii) No preliminary or permanent injunction or other order shall have been issued by any court or other governmental or regulatory authority, domestic or foreign, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any government or governmental or regulatory authority, domestic or foreign, that expressly declares this Agreement invalid or unenforceable in any respect or which expressly prevents the consummation of the transactions contemplated hereby, be in effect;

(iv) Developer shall have obtained the Village Approvals for the Project, and all Village Approvals shall have become Final and Unappealable;

(v) Developer shall not be in default under this Agreement beyond any applicable notice and/or grace period;

(vi) The Village's receipt and approval, not to be unreasonably withheld or delayed, of the Performance and Liquidated Damages Bonds, required to be provided by Developer, its contractors or subcontractors to a Recognized Mortgagee in connection with the construction financing of the Project. The surety on both the Performance and Liquidated Damages bonds shall be a recognized surety doing business in the State of New York, and shall comply with the requirements of Section 2.10 of this Agreement;

(vii) Developer shall have delivered to the Village all of the items set forth in Section 5.2(b) of this Agreement;

(viii) Developer shall have reimbursed the Village for all sums required to be reimbursed under this Agreement which are then due and owing, if any; and

(ix) Developer shall have delivered to the Village reasonably satisfactory evidence of its financial ability to perform its obligations under this Agreement (which shall be deemed to include any Recognized Mortgage).

6.2. **Conditions To Obligations Of Developer.** The obligation of Developer to consummate the Closing and acquire title to the Disposition Parcel is subject to the fulfillment of each of the items below, at or before the Closing Date of, any one or more of which may be waived by Developer in its sole discretion:

(i) All representations and warranties made by the Village in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by the Village on and as of such date, and Developer shall have received a certificate dated the Closing Date and signed by duly authorized representatives of the Village to that effect;

(ii) The Village shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and Developer shall have received a certificate dated the Closing Date and signed by a duly authorized representative of the Village to that effect;

(iii) No preliminary or permanent injunction or other order shall have been issued by any court or other governmental or regulatory authority, domestic or foreign, nor shall any statute, rule, regulation, decree or executive order have been promulgated or enacted by any government or governmental or regulatory authority, domestic or foreign, that expressly declares this Agreement invalid or unenforceable in any material respect or which expressly prevents the consummation of the transactions contemplated hereby be in effect;

(iv) Developer shall have obtained the Village Approvals for the Project, and all Village Approvals shall have become Final and Unappealable;



(v) The Village shall not be in default under this Agreement beyond any applicable notice and/or grace period; and

(vi) The Village shall have delivered to Developer all of the items set forth in Section 5.2(a) of this Agreement.

6.3. **Closing Date.** In the event that the Closing has not occurred (other than as a result of Unavoidable Delays or Absolute Constraints, or termination of this Agreement by Developer pursuant to Section 11.2(c) hereof) by the Closing Date, as defined in Section 5.1, and the parties hereto shall not have agreed to extend such Closing Date, then the Village shall have the right to terminate this Agreement by delivering written notice of such termination to Developer. In the event of such termination, Developer shall reimburse the Village for all costs and expenses pursuant to the terms and conditions of Section 14.2, and shall also be subject to Section 2.10(a)(i).

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES**

7.1. **Representations By Developer.** Developer hereby represents and warrants to the Village that the following is true as of this date and shall be true as of the Closing Date:

(i) Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the State of New York, has all necessary power, corporate and otherwise, to execute and deliver and carry out this Agreement and to perform all obligations hereunder, and has taken all necessary action to authorize the execution delivery and performance of this Agreement;

(ii) This Agreement has been duly authorized by all requisite action on Developer's part;

(iii) This Agreement constitutes, and at the Closing, all other documents, instruments and agreements now or hereafter to be executed and delivered by Developer pursuant to the Agreement (the "Developer Documents") will constitute, the legal, valid and binding obligations of Developer, its successors and assigns, enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, moratorium or similar laws of general application relating to or affecting creditors' rights generally and except for the limitations imposed by general principles of equity;

(iv) The execution, delivery and performance by Developer of the Developer Documents: (a) will not contravene any provision of the articles of organization of Developer: or (b) conflict with, or result in any breach or violation of or default under any note, bond, indenture, lease, license, permit, agreement or other instrument or obligation to which Developer is a party or by which it is or may be bound: or (c) to the best of Developer's knowledge violate any law, order, rule, regulation, judgment, order, decree, writ or injunction applicable to Developer. No consent or approval by any Governmental Authority or by any third party is

required in connection with the execution, delivery and performance of the Developer Documents by Developer; and

(v) There are no voluntary actions pending or contemplated, nor, to the best of Developer's knowledge, involuntary actions pending or threatened, against Developer under any bankruptcy, reorganization, arrangement, insolvency or similar federal or state statute.

7.2. **Representations By The Village.** The Village hereby represents and warrants that the following is true as of this date and shall be true as of the Closing Date:

(i) The Village is a municipal corporation formed under the laws of the State of New York, has all necessary power to execute, deliver and carry out this Agreement and to perform all obligations hereunder, and has taken all necessary action to authorize the execution, delivery and performance hereof;

(ii) This Agreement has been duly authorized by the Village by all requisite action on its part;

(iii) This Agreement constitutes, and at the Closing, all other documents, instruments and agreements now or hereafter to be executed and delivered by the Village pursuant to this Agreement (the "Village Documents") will constitute, the legal, valid and binding obligations of the Village, enforceable against it in accordance with their terms, except as may be limited by applicable bankruptcy, insolvency, moratorium or similar laws of general application relating to or affecting creditor's rights generally and except for the limitations imposed by general principles of equity; and

(iv) The Village does not have any actual knowledge of any Environmental Conditions, which are not disclosed in the Remedial Action Plan.

## **ARTICLE VIII**

### **CONDITION OF THE PROJECT SITE; RISK OF LOSS**

8.1. **Disposition Parcel "As Is"; Compliance With Law.** Except as expressly set forth in this Agreement, no representations or warranties have been made by the Village or by anyone on behalf of the Village to Developer as to: (i) the physical condition of the Disposition Parcel; (ii) the compliance of the Disposition Parcel with laws, ordinances, or governmental regulations regarding zoning, subdivision, land use and building code requirements which may be applicable to the Project Site or any part thereof; or (iii) any other matter or thing affecting the Project Site or any part thereof. Developer represents that it has inspected the Project Site, the exteriors of the existing buildings and improvements constituting part of the Project Site, if any, and the uses thereof, to its satisfaction, that it has independently investigated, analyzed and appraised the value thereof, that it has independently performed a preliminary environmental assessment thereof, and that it agrees to take title to the Disposition Parcel "AS IS," in the same condition it is as of the date hereof, subject only to reasonable wear and tear, and except as otherwise required by the terms and conditions of this Agreement. The Village shall not be liable or bound by any verbal or written statements, representations, real estate brokers' "setups" or

information pertaining to the Project Site or any portions thereof furnished by any real estate broker, agent, employee, servant, public official, or any other person, unless the same are specifically set forth herein. All oral or written prior statements, representations, or promises, if any, and all prior negotiations and agreements in connection with the purchase of the Disposition Parcel and the development of the Project are superseded by this Agreement and merged herein. The Village shall not under any circumstances be liable to Developer for any damages resulting from any damage, destruction or casualty to the Project Site, or the buildings and improvements thereon and fixtures therein which occurs from and after the date hereof through and including the Closing Date.

## ARTICLE IX

### BROKERAGE

9.1. **Brokerage And Indemnification.** The Village and the Developer each represent that no broker brought about or was instrumental in bringing about the transactions set forth in this Agreement. There are no third party beneficiaries of this provision. Notwithstanding the provisions of this Section, Developer specifically indemnifies and shall hold the Village harmless against any and all claims for brokerage commissions, finders fees and the like which may be asserted by any realtor or broker in connection with the Project.

## ARTICLE X

### CONSTRUCTION OF THE PROJECT

10.1. **The Project.** Developer shall construct the Project in accordance with the Site Plan, the Village Approvals and with any and all approved Construction Plans and modifications and future approvals hereunder. Developer may not modify, change or alter any use or aspect of the Project, particularly with regard to the Publicly Accessible Area and Village Land, without obtaining amended special permit approval and/or amended site development plan approval in accordance with Section 270-21(C)(7) of the Zoning Law of the Village.

#### 10.2. **Construction Of Public Improvements And Public Infrastructure.**

(a) **Public Improvements and Public Infrastructure.** Developer shall commence the construction of the Public Improvements and Public Infrastructure, including the Promenade and the Public Improvements situated on the Publicly Accessible Land and the Village Land, as soon after the Construction Commencement Date of the Project as is commercially reasonable, with the intent of making the Promenade on the Village Land useable as soon as is practicable in the course of construction of the Project.

(b) **Temporary Access.** The Village shall not permit public access to the Village Land or to the Publicly Accessible Area until the construction of the Project has progressed to the point that access to and use of those portions of the Project Site shall not compromise public health and safety, except for access to the ferry; in the event that Developer and the Village

cannot agree when public access and use should be permitted, the dispute shall be subject to arbitration in accordance with this Agreement. Developer shall make all best efforts in scheduling construction of the Project, creating pathways for access and in granting any necessary temporary easements or rights-of-way so as to facilitate the goal of public access to and use of the waterfront at the earliest responsible opportunity. Access to the ferry and commuter parking shall not be obstructed during construction of the Project.

10.3. **Submission And Approval Of Construction Plans For The Project.** No later than one hundred eighty (180) days after the Closing Date, Developer shall deliver to the Village Building Department complete construction plans, drawings and specifications for the Project and for the Public Improvements and the Public Infrastructure (the "Construction Plans") for review and the issuance of appropriate building permits, as well as a detailed construction staging plan. The Village Building Inspector shall review the Construction Plans and construction staging plan and, if satisfied, shall issue appropriate permits to Developer as expeditiously as is reasonably practicable.

10.4. **Construction Schedule.**

(a) **Commencement of Developer Remediation.** Within thirty (30) days following the execution of this Agreement, Developer shall commence demolition of buildings required for the performance of the Remedial Work required by the Remedial Action Plan. Remedial Work shall be diligently and continuously pursued in accordance with the approved Remedial Action Plan in accordance with Article XI of this Agreement and the License Agreement.

(b) **Commencement of Construction.** Within one hundred eighty (180) days following the issuance by the Village Building Department of a building permit for the first Project Building to be constructed (the "Construction Commencement Date"), Developer shall Commence Construction of the Project to the extent permitted by law, including but not limited to, construction of building foundations. Developer shall diligently and in good faith Commence Construction of the Project, and shall thereafter diligently pursue the construction and completion of the Project using commercially reasonable efforts. Developer's construction responsibilities shall include all site and infrastructure work required for the Project, including all demolition work of existing structures on the Project Site. Developer's failure to timely Commence Construction shall constitute Developer default, subject to Unavoidable Delays and Absolute Constraints.

(c) **Completion of Construction.** Developer shall complete the construction of the Project including the Public Improvements in accordance with the Site Plan, Village Approvals and the approved Construction Plans as evidenced by the issuance by the Village Building Department of final certificate(s) of occupancy for the "shell" of each Project Building (but not by certificates of occupancy for the residential condominium units and/or the leaseable commercial space in such buildings) and the issuance of a "certificate of compliance" for the Public Improvements on or before the date which is thirty (30) months after the Construction Commencement Date, subject to Unavoidable Delays and Absolute Constraints (the "Construction Completion Date"). Developer agrees for itself, its successors and/or assigns, and every successor in interest to all or any portion of the Disposition Parcel, and any deed to the

Disposition Parcel shall contain covenants on the part of Developer for itself and its successors and/or assigns, that Developer and such successors and/or assigns shall begin and diligently prosecute to completion the development of the Project within the time limits set forth in this Agreement. It is intended and agreed, and any deed to the Disposition Parcel shall so expressly provide, that such agreement and covenants shall be covenants running with the land and that they shall, in any event, and without regard to any classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of and enforceable by the Village against Developer and its successors and/or assigns, and every successor in interest to the Disposition Parcel, or any part thereof or any interest therein.

(d) Certificates of Occupancy and Completion. The Village Building Department shall issue: (i) separate final certificates of occupancy for the shell of each Project Building and subsequently for each separate residential condominium unit and demised commercial space in each Project Building; and (ii) a separate "certificate of compliance" for the Public Improvements. Promptly after the issuance by the Village Building Department of a final certificate of occupancy for the shell of each Project Building, and after the issuance of a certificate of compliance for the Public Improvements, the Village shall furnish Developer with an instrument in the form attached hereto as Exhibit "J" certifying the completion of the applicable Project Building and/or the Public Improvements, as the case may be, in accordance with this Agreement (each a "Certificate of Completion" and collectively, the "Certificates of Completion"). Each Certificate of Completion shall be (and it shall be so provided in the deed to the Disposition Parcel) a conclusive determination of satisfaction and termination of all of the obligations under this Agreement of the Developer to construct and complete such Project Building and the Public Improvements and/or Public Infrastructure, as the case may be. The Certificates of Completion shall be in such form as will enable them to be recorded in the Clerk's Office, and may be so recorded in the Clerk's Office by Developer. If the Village shall refuse or fail to furnish either a final certificate of occupancy or a Certificate of Completion upon Developer's request and otherwise in accordance with this Agreement, the Village shall, within thirty (30) days after written request by Developer, provide Developer with a written statement specifying in detail in what respects the Developer has failed to complete the construction of the relevant portion of the Project in accordance with specified provisions of this Agreement, and what measures or acts it will be necessary, in the opinion of the Village, for Developer to take or perform in order to obtain a certificate of occupancy or Certificate of Completion. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Village shall not be required to issue a Certificate of Completion for any Project Building unless and until Developer has received a Certificate of Completion for the Public Improvements, and any dispute with respect to the issuance of a Certificate of Completion shall be subject to arbitration in accordance with Article XVIII of this Agreement.

(e) Diligent Prosecution of Construction. In the event that Developer fails to complete construction of the Project by the Construction Completion Date (a "Completion Default"), then Developer shall be subject to and shall pay to the Village liquidated damages ("Completion Damages") for each day that the Project is not thereafter completed as follows:

(i) the sum of \$1,000.00 per day for each of the first sixty (60) days after the Construction Completion Date;

- (ii) the sum of \$2,000.00 per day for each of the next sixty (60) days;
- (iii) the sum of \$5,000.00 per day for each of the next sixty (60) days; and
- (iv) the sum of \$10,000.00 per day for each of the next one hundred twenty (120) days;

provided that in no event shall the aggregate total amount of Completion Damages for which Developer is liable exceed the sum of one \$1,500,000.00. The payment by Developer of the Completion Damages shall be secured by the Liquidated Damages Bond.

10.5. **Responsibility For Development.** Developer shall be responsible for, at its cost and expense, the construction and development of the Project, including the Public Improvements, the Public Infrastructure, and the necessary "private" utility connections between the Project and the sanitary sewer, storm drains, water lines, electric, gas, telephone and other public utility lines owned by the Village, any other Governmental Authority or any public utility company within or beyond the boundaries of the Project Site, and Developer shall secure all permits and approvals required in connection with the foregoing. The Village acknowledges that Developer may seek funding from Governmental Authorities (whether in the form of grants or loans, or both) other than the Village in connection with the construction of the Public Improvements, the Public Infrastructure and the Remedial Work, and the Village agrees that it shall cooperate with Developer as is reasonably necessary to facilitate such funding; provided, however, that the Developer's obligations herein are not in any way dependent upon obtaining outside funding for said activities, and further provided that any such third-party funds shall not in any way reduce the aggregate area of the Publicly Accessible Area, or impair Village ownership and use of the Village Land, or unreasonably burden public access to the waterfront in accordance with the terms and conditions of this Agreement. Any such third party funds may be applied by Developer to the Project in its sole discretion in accordance with the limitations set forth herein.

10.5.1. **Snowden Water Main.** Developer agrees to replace at its sole cost and expense approximately 2600 linear feet of existing 6-inch Village water main in Snowden Avenue with 12-inch ductile iron pipe, including all service and hydrant connections. Such replacement shall extend from the end of the existing 12-inch Village water main located in Snowden Avenue, approximately 150 feet north of Montgomery Street, to existing 8-inch Village water mains located at the intersection of Broadway/ Water Street and Westerly Bridge. Such replacement shall also meet the standard requirements for municipal water systems applicable in the Village of Ossining, as determined by the Village Engineer in conformance with its normal rules, regulations and practices. The Developer shall also (i) transfer all existing service connections and hydrant laterals from the existing 6-inch Village water main to the new 12-inch water main, after which, the Developer shall drain, cut and cap the condemned 6-inch water main, (ii) produce all necessary utility surveys and construction documents for Westchester County Department of Health approval (if necessary), as well as undertake all pre-construction "Code 53" utility coordination and (iii) conduct all pre-construction bacteria testing measures, including, but not limited to, pressure testing and disinfection as per Westchester County Department of Health standards. In conjunction with the water line replacement work, the Village agrees to expedite, where feasible, the processing of all Village required permits and

approvals for the work; provide for the temporary closing of streets in connection with the Developer's maintenance and protection of traffic, as well as provision of all necessary flagmen, signage and rerouting of traffic; provide engineering inspections of the work as required; execute all "wet taps" from the new water line to existing Village water mains, including, those at Snowden Avenue, Montgomery Street, Van Wyck Street, Matilda Street, Westerly Road, and Broadway/Water Street; perform all required bacterial or health-related testing of the water from the new line; and generally perform all municipal functions related to the installation of such a line as necessary for the Developer to complete the work in an expeditious manner. Following completion of the water line replacement work, the Village will test the existing hydrant at Westerly Road west of the railroad station to confirm the necessary flow residual pressure at an adjoining hydrant. Such a flow should provide the Project with a fire supply sufficient to preclude the need for a supplemental on-site fire storage tank. In the event that such a flow not be achieved, the Developer shall undertake the necessary steps to achieve such a flow, and provide the Project with a fire supply sufficient to preclude the need for a supplemental on-site fire storage tank, provided that the Village will endeavor through normal maintenance procedures to assist in that goal.

10.6. **Mitigation Measures.** Developer agrees that the Project and the Site Plan shall, without further act of the Village or Developer, be deemed amended to include all mitigation measures required by the findings and determinations of any other involved agency under SEQRA, and such mitigation measures shall be duly included in the Construction Plans.

10.7. **Easements For Performance of the Remedial Work and Construction Of The Project.** The Village shall grant to Developer such easements and/or licenses as may reasonably be required to facilitate the pre-Closing Remedial Work and the post-Closing construction of the Project, and shall cooperate with Developer and use its best efforts to assure that Developer receives from other third parties such easements, rights-of-way or other rights or interests as are reasonably necessary to enable Developer to construct the Project; provided, however, that any costs or expenses incurred by the Village in connection with obtaining any such rights from a third party shall be paid by Developer. Notwithstanding the foregoing, the Village shall not incur any such costs or expenses without the prior written consent of Developer, which may be withheld in the sole discretion of Developer. The Village hereby grants the Developer a license to enter upon and construct within the rights-of-way of Secor Road and Westerly Road the Public Improvements and Public Infrastructure shown on the Site Plan, which license shall terminate on the Construction Completion Date.

## **ARTICLE XI**

### **ENVIRONMENTAL INDEMNITY AND REMEDIATION**

11.1. **Indemnification.** Unless Developer terminates this Agreement pursuant to Section 11.2(c), Developer shall indemnify and hold harmless the Village and its successors and assigns, and the Village's employees, officials and agents (the "Indemnitees"), in their respective official capacities, from and against any Environmental Damages of whatever kind or nature, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' and consultants' fees and disbursements and

investigations and laboratory fees arising out of, or in any way related to the Environmental Conditions.

**11.2. Developer's Remedial Work.**

(a) In accordance with the schedule set forth in Section 10.4, and in accordance with the terms of the License Agreement, Developer shall promptly perform any and all necessary remedial work required by the Remedial Action Plan to address the Environmental Conditions (the "Remedial Work"). The Remedial Work shall be performed in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, and with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities. Developer shall provide written notice at least fifteen (15) days in advance of the selection of an environmental engineer to perform such services. Developer shall also provide the Village written notice at least fifteen (15) business days before the commencement of Remedial Work of the names of the contractors selected to perform such Remedial Work, and provide to the Village copies of the contracts and other documents entered into with such parties. In addition, Developer shall submit to the Village promptly upon receipt or preparation thereof, copies of any and all amendments to the Remedial Action Plan, reports, studies, analyses, correspondence, governmental comments or approvals and similar information in connection with any Remedial Work. Any reports to be delivered to the New York State Department of Environmental Conservation ("NYSDEC") with respect to the Remedial Work must be reviewed and approved by Developer and the Village prior to submission, which approvals shall not be unreasonably withheld, conditioned or delayed.

(b) The Remedial Action Plan is attached hereto as Exhibit "K" and made a part hereof. Except as otherwise provided in the License Agreement, Developer's obligation is to perform the Remedial Work in accordance with the Remedial Action Plan, and to furnish the Village's Environmental Consultant (hereinafter defined) with all invoices, progress reports, plans, and other documents reasonably sufficient to assure the Environmental Consultant that: (i) all expenditures are in furtherance of the Remedial Action Plan; and (ii) all the Remedial Work required by the Remedial Action Plan has been accomplished in accordance with the Remedial Action Plan.

(c) Remediation Costs. The costs of performing the Remedial Work (the "Remediation Costs") for the Environmental Conditions shall be allocated as follows: (i) Developer shall be liable for the first Two Hundred Thousand Dollars (\$200,000.00) of Remediation Costs; (ii) the Village shall be liable for the next Five Hundred Thousand Dollars (\$500,000.00) (the "Village Share") of the Remediation Costs (the source of which may be funds it may receive from third-parties arising from or related to private cost-recovery or contribution claims and/or actions); and (iii) any Remediation Costs in excess of Seven Hundred Thousand Dollars (\$700,000.00), shall be the sole responsibility of, and be paid by, Developer. It shall be Developer's responsibility to advance the Village Share set forth in clause (ii) above on the Village's behalf regardless of the allocation of liability to the Village. Notwithstanding anything in this Agreement to the contrary, prior to the Closing and the conveyance of the Disposition Parcel to Developer, Developer shall have the absolute right in its sole discretion to terminate this Agreement upon written notice to the Village (which shall contain a copy of any estimate of



the Remediation Costs on which Developer is relying, accompanied by a professional engineer's certification that such estimate is reasonable and in accordance with accepted remediation practices) if Developer determines, in good faith and after the exercise of commercially reasonable due diligence, that the Remediation Costs for the Environmental Conditions are anticipated to materially exceed Seven Hundred Thousand Dollars (\$700,000.00), and upon such termination the Letter of Credit shall be released and promptly returned to Developer, and thereafter the parties shall have no further obligations or liabilities to each other under this Agreement. Notwithstanding the foregoing and anything in this Agreement to the contrary, the Village and the Developer agree that any and all governmental grants or other financial assistance that may be received including, but not limited to, funding under the New York State Environmental Quality Bond Act, the purpose of which is to defray all or any portion of the Remediation Costs, shall be allocated between the Village and the Developer pro rata according to the Village's and Developer's respective Remediation Costs.

(d) Credit At Closing. In the event that Developer shall proceed to Closing, Developer shall receive a credit against the Purchase Price in the amount of the Village Share advanced by Developer on behalf of the Village in accordance with Section 11.2(c)(ii) above.

(e) Excluded Costs. Remediation Costs shall not include any of the costs of any construction activities not exclusively associated with the Remedial Work, including: (i) any environmental investigation or testing undertaken by Developer in connection with its due diligence activities hereunder; (ii) any investigation, testing or consulting expenses incurred by Developer in connection with the preparation and approval by NYSDEC of the Remedial Action Plan; (iii) any demolition activities and removal of asbestos from demolished structures, if any; (iv) any Environmental Damages arising from or related to Environmental Conditions caused by or resulting from any act or omission of Developer, its officers, employees, agents, contractors, invitees, licensees, permittees, or subtenants after the Closing Date which gives rise to liability under any Environmental Law; or (v) an Excluded Cost as set forth in Section 5.1 of the License Agreement.

(f) Additional Costs. In the event that any Environmental Condition is exacerbated by Developer or its agents or contractors, Developer shall be liable for any additional costs to perform the remediation necessary to address the exacerbated condition and/or any Environmental Damages which may arise as a result thereof.

(g) License Agreement is Controlling. Notwithstanding the foregoing and any provision in this Agreement, the Remedial Work shall be performed pursuant to and in accordance with a certain License Agreement and Exhibit A thereto made between the Developer and the Village and dated the same date as this Agreement, and in the event of any conflict or inconsistency between the terms and provisions of this Agreement and the License Agreement, then the terms and provisions of the License Agreement shall control. If Closing shall occur prior to the issuance by the New York State Department of Environmental Conservation ("NYSDEC") of Certification of Completion (as such term is defined by the License Agreement and Exhibit A thereto) or certification by the Environmental Consultant, as the case may be, that the Remedial Work has been satisfactorily completed, then paragraphs 1.1, 1.3, 2.4, 2.5, 2.6, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 5.1 – 5.9, 6.1-6.2, 7.1-7.3, 8.2, 9.1, 9.4 (as to

the first sentence thereof), 9.5, 10.2 and 10.3 of the License Agreement shall survive the Closing and shall be incorporated into this Agreement.

11.3. **Village Environmental Consultant.** The Village has retained an environmental consultant (the "Environmental Consultant") to review the Remedial Work that Developer will conduct in accordance with the Remedial Action Plan. Developer shall reimburse the Village for the costs incurred by the Village for such Environmental Consultant up to a maximum amount of Twenty-Five Thousand Dollars (\$25,000.00); provided, however, that such limitation shall not restrict the Village's right to engage the Environmental Consultant for additional services at the Village's own expense. Developer shall cooperate with the Village's Environmental Consultant by ensuring access to the Project Site during remediation, and promptly responding to oral and written information requests.

11.4. **Defense of Claims.** If any suit, proceeding, claim or demand is brought or made against the Village with respect to Environmental Conditions at the Project Site subsequent to the Closing, the Developer may elect: (i) to undertake the defense thereof in cooperation with the Village and, provided counsel to the Developer is reasonably acceptable to the Village, at Developer's expense; or (ii) to notify the Village to undertake the defense thereof with counsel as may be mutually acceptable to the parties hereto. If Developer notifies the Village to undertake the defense, the Village shall undertake the defense at Developer's expense, said reasonable payments to be made on a monthly basis; and in such case, Developer may at its option join in the defense, but at its own expense, and the Village would control the defense. The parties agree that Developer shall have the right to compromise or settle any suit or claim in which the Village or its Indemnitees are named only if such settlement shall result in a full and final release of all claims against the Village or its respective Indemnitees. In the event of a settlement, Developer shall remain liable to the Village for all reasonable costs of defense that have been incurred by the Village.

11.5. **Survival.** The provisions of this Article XI shall survive Closing, the Project Completion Date and the termination of this Agreement, except termination of this Agreement pursuant to Section 11.2(c).

## **ARTICLE XII**

### **PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

12.1. **Representations As To Redevelopment.** Developer represents and agrees that its purchase of the Disposition Parcel and its other undertakings pursuant to this Agreement are for the purpose of redevelopment of the Project Site and not for speculation in land holding. Developer further acknowledges and agrees that, in view of the importance of the redevelopment of the Project Site to the community, the qualifications and identity of Developer and Louis R. Cappelli and Martin Ginsburg, as its principals (each a "Principal" and collectively, the "Principals") are essential to the community.

12.2. **Prohibition Against Transfers.** Except for any transfer authorized by this

Agreement (including, but not limited to, permitted assignments and/or transfers pursuant to Section 12.4 of this Agreement) and then only in accordance with the terms and conditions of this Agreement, in consideration of the provisions of Section 12.1, Developer represents and agrees for itself and its members that prior to the Project Completion Date, and without the prior written approval of the Village, which approval may be granted or withheld in the sole discretion of the Village, but not unreasonably delayed or conditioned:

(i) there shall be no transfer of the controlling interest in the Developer of the Principals; provided, however, upon written notice to the Village, a Principal may transfer all or any portion of the Principal's interests in the Developer to an immediate family member or members, or to a family limited partnership either directly while living, or by will, through intestacy or by trust; provided in all such cases that there shall be no transfer of the conduct or control of the business and management of the Project by the Principal. Notwithstanding anything to the contrary in this Agreement, any minority interest in any form of ownership of Developer may be freely transferred either with or without receiving consideration therefor at any time and without such notice; provided in all such cases that there is no transfer of the conduct or control of the business and management of the Project by the Principals. For purposes of this Section 12.2(a), "immediate family member(s)" shall mean a Principal's spouse, children, grandchildren, parents, brothers or sisters and any interest so transferred shall be transferred subject to and conditioned upon all of the terms, covenants, and provisions of this Agreement;

(ii) nor shall there be any transfer of responsibility or authority for the conduct and control of the business and the management of the affairs of Developer by the Principals;

(iii) nor shall Developer's interest in this Agreement or the Project be transferred to a partnership unless: (A) Developer or the Principals are the general partners whether the partnership is a limited partnership or a general partnership; (B) if the transferee is a general partnership, Developer or the Principals own a minimum of fifty (50%) of the partnership interests of the transferee, or if the partnership is a limited partnership, Developer or the Principals (or a corporation or limited liability company in which a Principal is the majority shareholder and director or managing member) is the general partner and the limited partners are immediate family members of the Principals only; and (C) in all cases, Developer or the Principals (or a corporation or limited liability company in which a Principal is the majority shareholder and director or managing member) maintains and exercises control over the business and management of the Project until the Project Completion Date;

(iv) nor shall Developer's interest in this Agreement or the Project be transferred to (A) a corporation unless Developer or the Principals are the majority shareholders and directors of the transferee corporation; or (B) a limited liability company unless Developer or the Principals are the managing members;

(v) nor shall there be or be suffered to be by Developer or by a Principal any other similarly significant change in the ownership (which is inconsistent with the aforesaid provisions requiring control of Developer by a Principal) of Developer or any permitted successor entity or in the relative distribution of the ownership interests thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any other method or means whether by

increased capitalization, merger with another entity, issuance of additional or new partnership or membership interests, or stock, or classification of partnership or membership interests or stock, or otherwise. With respect to this provision, Developer and the party signing this Agreement on behalf of Developer represent that it and he have the authority of the appropriate majority of the shareholders; and

(vi) there shall not be any voluntary dissolution, or merger or consolidation with any other entity, except for a merger or consolidation with an entity in accordance with subsections (iii) and (iv) above; provided, however, that prior to the Project Completion Date, Developer or a Principal may enter into any one or more executory contracts for any transfers of interests in the Disposition Parcel, the Project and/or this Agreement upon the Project Completion Date.

**12.3. Prohibition Against Transfer Of The Project And Assignment Of Agreement.**

(a) General Prohibition. Developer represents and agrees for itself and its successors and/or assigns that, subject to and except as otherwise provided in Section 12.2, and except for: (i) any permitted transfer in connection with a Recognized Mortgage or to a Foreclosure Transferee (hereinafter defined) in accordance with Article XIII of this Agreement; and/or (ii) permitted assignments and/or transfers pursuant to Section 12.4 of this Agreement, until the Project Completion Date, Developer has not made or created, and that it will not prior to the Project Completion Date, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease (except conveyance of title to residential condominium units in the Project Buildings, related transfers of property interests to duly formed condominium associations, and sales and/or leases of commercial space in the Project Buildings to tenants), or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Project, or any contract, option or agreement to do any of the foregoing, without the prior express written approval of the Village, which consent may be granted or withheld in the Village's sole discretion, but not unreasonably delayed or conditioned.

(b) Conditions to Village Approval. The Village shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any approval required pursuant to Sections 12.2 or 12.3 that:

(i) any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Village, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer with respect to the Project (or, if the transfer relates to a portion/phase of the Project, then such obligations to the extent that they relate to such portion and/or phase);

(ii) any proposed transferee, by instrument in writing satisfactory to the Village and in form recordable in the Clerk's Office, shall, for itself and its successors and assigns, and expressly for the benefit of the Village, have expressly assumed all of the obligations of Developer under this Agreement, the Easement Agreement and the License Agreement with respect to the Disposition Parcel, or any portion thereof or interest therein, to be conveyed and agreed to be subject to all the conditions and restrictions to which Developer is subject with respect to the Disposition Parcel; provided, however, that the fact that any

transferee of, or any other successor in interest whatsoever to, the Disposition Parcel (except a Recognized Mortgagee or a Foreclosure Transferee), shall not have, for whatever the reason, assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement, or agreed to in writing by the Village) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Village of or with respect to any rights or remedies or controls with respect to the Disposition Parcel or the construction of the Project; it being the intent of this provision, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Disposition Parcel or any interest therein, whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Village of or with respect to any rights or remedies or controls provided in or resulting from this Agreement, the Easement Agreement and the License Agreement with respect to the Disposition Parcel and the construction of the Project that the Village would have had, had there been no such transfer or change; and

(iii) prior to the execution thereof, there shall be submitted to the Village all instruments and other legal documents involved in effecting any transfer; and if such documents are approved by the Village, its approval shall be indicated to the Developer in writing.

12.4 **Permitted Assignments And Transfers.** Notwithstanding anything in this Agreement to the contrary, Developer may upon written notice to the Village but without any consent or approval of the Village: (i) with respect to any Project Building for which a Certificate of Completion has been issued, sell and convey condominium units in that Project Building to homeowners and make related assignments and transfers of property interests to duly formed condominium associations, and lease or sell commercial space in the Project Buildings to users/operators thereof; (ii) from time to time before and after Closing, assign or transfer any or all of its interests under this Agreement or in and to the Project and/or the Disposition Parcel to any Affiliate, and from and after any such assignment, such entity shall be deemed to be a Developer under this Agreement; and (iii) from time to time before and after Closing, assign and/or pledge its interests under this Agreement and/or in and to the Project, and its membership interests therein, to an Institutional Lender in connection with "mezzanine" or other financing. For the purposes of this Agreement, "Affiliate" shall mean an entity which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, the Developer or the Principals; the term "control" (including the related terms "controlled by" and "under common control with") means: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise; and (ii) the ownership, either directly or indirectly, of at least fifty percent (50%) of the voting stock or other equity interest of such entity.

12.5 **Survival.** This Article XII shall survive the Closing and the termination of this Agreement. Notwithstanding the foregoing, this Article XII shall not survive the Project Completion Date, except that the Developer and its successors and/or its assigns shall provide

Village with written notice of any transfer or conveyance of its interests herein, including, the Disposition Parcel or Project Buildings, and a copy of the instrument setting forth the continued obligations of the transferee as set forth in section 12.3(b)(ii) herein.

## ARTICLE XIII

### MORTGAGE FINANCING

#### 13.1. **Definitions.**

(a) **Institutional Lender.** "Institutional Lender" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company, or foreign banking institution authorized to do business in New York (whether acting individually or in a fiduciary capacity); an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company authorized to do business in New York; a publicly held real estate investment trust; a brokerage or investment banking organization (acting as principal or agent); a religious, educational or eleemosynary institution; an employees' welfare, benefit, pension or retirement fund; any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders; provided that each of the above entities shall qualify as an Institutional Lender only if it shall: (i) be subject to the jurisdiction of the courts of the State of New York in any action; and (ii) have assets of not less than One Hundred Million Dollars (\$100,000,000.00) adjusted for inflation.

(b) **Mortgage.** "Mortgage" means any mortgage or deed of trust, and all extensions, spreaders, splitters, consolidations, restatements, modifications and amendments thereof, that constitutes a lien on all or a portion of the Disposition Parcel.

(c) **Recognized Mortgage.** "Recognized Mortgage" means a Mortgage that: (i) is held by a person or entity which is, at the time the Mortgage is executed, delivered and recorded, an Institutional Lender, or an Affiliate of Developer, or any other lender, public or private, provided that such other lender shall have the financial ability, as reasonably determined by the Village, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer with respect to the Project; (ii) secures financing the sole purposes of which are the acquisition of the Disposition Parcel and construction of the Project in accordance with this Agreement, or the permanent financing in connection therewith, and such additional funds not to exceed the Purchase Price for the Disposition Parcel; and (iii) complies with and is subject to the provisions of this Agreement.

(d) **Recognized Mortgagee.** "Recognized Mortgagee" means the holder of a Recognized Mortgage.

#### 13.2. **Right To Mortgage.**

(a) **Right to Mortgage.** Developer (or any successor in interest pursuant to the terms of this Agreement) shall not enter into any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Disposition Parcel (except for conveyance of

title to residential condominium units in the Project Buildings, related transfers of property interests to duly formed condominium associations, and sales and/or leases of commercial space in the Project Buildings to tenants), whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to said Project or Project Site, except for a Recognized Mortgage subject to the terms and conditions of this Article XIII.

(b) Notification of Recognized Mortgage. Developer (or any successor in interest pursuant to the terms of this Agreement) shall notify the Village in advance of any financing it proposes to enter into which financing will be secured by a Recognized Mortgage.

(c) Delivery of Recognized Mortgage. A duplicate original of a Recognized Mortgage or a copy thereof shall be delivered to the Village within ten (10) days of the execution thereof, together with: (i) a certification by the Developer and the Recognized Mortgagee confirming that the copy is a true copy of the Recognized Mortgage and giving the name and post office address of the holder thereof; and (ii) a statement identifying the section of the Recognized Mortgage which sets forth the requirements for the giving of notices to the Recognized Mortgagee thereunder.

(d) Mortgagee's Rights Not Greater than Developer's. With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of this Article XIII, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give or be deemed to give a mortgagee or a Recognized Mortgagee any greater rights against the Village than those granted to Developer hereunder. Further, the rights granted to a Recognized Mortgagee under the provisions of this Article XIII shall not apply in the case of any mortgagee that is not a Recognized Mortgagee.

(e) Land Acquisition and Disposition Agreement. Any Mortgage encumbering the Disposition Parcel shall contain the following provision:

"This mortgage is subject to all of the provisions of that certain Land Acquisition and Disposition Agreement dated as of \_\_\_\_\_, 2005 (the "Agreement"), and any and all other agreements by and among the Village of Ossining and Harbor Square, LLC, its successors and/or assigns, as the same may be amended in accordance with the terms thereof. In the event that the mortgagee becomes the owner of the property subject to this mortgage or any part thereof either through an action to foreclose the mortgage or a deed in lieu thereof, or by any other mechanism, then the mortgagee or any permitted successor or assignee, shall be subject to all of the terms, covenants, restrictions and provisions contained in the Agreement, and any and all other agreements by and among the Village of Ossining and Harbor Square, LLC, its successors and/or assigns."

13.3. **Mortgagee Not Obligated To Construct.** Notwithstanding anything to the contrary in this Agreement, a Recognized Mortgagee shall not be obligated to construct or complete any portion of the Project covered by the Recognized Mortgage or to guarantee the completion of the same; provided, however, that nothing herein contained shall be deemed or construed to permit or authorize the Recognized Mortgagee or any Foreclosure Transferee to

devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted by this Agreement.

#### **13.4. Notice And Right To Cure Developer's Defaults.**

(a) Notice to Recognized Mortgagee. The Village shall give to the Recognized Mortgagee, at the address of the Recognized Mortgagee stated in the certification referred to in Section 13.2(c), and any other Recognized Mortgagee whose address is stated in a certification referred to in Section 13.2(c), or in any subsequent notice given by a Recognized Mortgagee to the Village, a copy of each Notice of Default at the same time as it gives a Notice of Default to Developer.

(b) Right to Cure. Except as otherwise provided in this Article XIII, all Recognized Mortgagees shall have thirty (30) days more after receipt of the Notice of Default than is given to Developer under this Agreement to: (i) cure the default referred to in the Notice of Default; or (ii) cause it to be cured; provided, however, that if the breach or default is with respect to any construction obligations, nothing contained herein shall be deemed to obligate such Recognized Mortgagee, either before or after foreclosure or an action in lieu thereof, to undertake or continue the construction or completion of the Project or any Public Improvements beyond that which is necessary to conserve or protect the improvements already constructed and/or provided under this Agreement.

(c) Acceptance of Recognized Mortgagee's Performance. The Village shall accept performance by the Recognized Mortgagee of any covenant, condition or agreement on Developer's part to be performed under this Agreement with the same force and effect as though performed by Developer, and if the Recognized Mortgagee fails to perform, the Village shall accept performance by any of the other Recognized Mortgagees.

(d) Commencement of Performance by Recognized Mortgagee. In the event a Recognized Mortgagee shall have elected to cure a default but such default is incapable of cure within the period of time specified in this Agreement, then if the Recognized Mortgagee delivers to the Village a notice of intention to cure (a "Cure Intention Notice"), no such default or event of default shall be deemed to have occurred if, following the delivery of the Cure Intention Notice, such Recognized Mortgagee shall:

(i) in the case of a default that is curable without possession of the Disposition Parcel by the Recognized Mortgagee, commence in good faith to cure the default and thereafter prosecute such cure to completion with due diligence and continuity; or

(ii) in the case of a default where possession of the Disposition Parcel is required in order to cure the default, initiate, and thereafter diligently pursue, steps to acquire Developer's interest in the Disposition Parcel by: (A) foreclosure, power of sale, or other enforcement proceedings under its Recognized Mortgage; or (B) obtaining an assignment of Developer's interest in the Disposition Parcel in lieu of foreclosure or through settlement of or arising out of any pending or



threatened foreclosure proceeding (any of the foregoing steps being referred to as an "Enforcement Proceeding"), or otherwise to obtain possession of the same (it being understood that such Recognized Mortgagee, in order to cure such default, shall be required to: (x) cause the cure of the default to be commenced promptly following obtaining legal possession of the mortgaged Disposition Parcel, whenever such legal possession may be obtained; and (y) prosecute such cure to completion with due diligence and continuity).

13.5. **Option To Pay Mortgage Debt/Purchase Of The Property.** At any time subsequent to a default or breach of this Agreement by the Developer whereby the Recognized Mortgagee has undertaken to cure the default in accordance with this Agreement, but does not thereafter diligently pursue such cure in the manner or within any applicable periods set forth in this Agreement (subject to Unavoidable Delays and Absolute Constraints), then the Village (and the Recognized Mortgage shall so provide) shall have the option of paying to the Recognized Mortgagee prior to a Foreclosure Transfer (hereinafter defined) of any Recognized Mortgagee's interest to a Foreclosure Transferee the amount of the mortgage debt and securing an assignment of the Recognized Mortgage and the debt secured thereby.

13.6. **Recognized Mortgagee's Assignment Rights.**

(a) Notwithstanding anything contained in Article XIII of this Agreement to the contrary, a Foreclosure Transfer to a Foreclosure Transferee pursuant to an Enforcement Proceeding shall be permitted without any consent or approval of the Village.

(b) **Definitions:**

(i) "Foreclosure Transfer" means a transfer occurring as a result of an Enforcement Proceeding, including, without limitation, the foreclosure of a Recognized Mortgage, or any sale of Developer's interest in the Disposition Parcel, or any other transfer or assignment of the Developer's interest in the Disposition Parcel by judicial proceedings or by virtue of any power contained in a Recognized Mortgage, or by assignment-in-lieu or deed-in-lieu of foreclosure, or other consensual conveyance, or otherwise: (A) by or on behalf of the Developer to a Recognized Mortgagee (or its designee or nominee) in connection with or pursuant to an Enforcement Proceeding; or (B) by or on behalf of Developer or a Recognized Mortgagee (or its designee or nominee) to a purchaser of the Developer's interest in the Disposition Parcel at a foreclosure sale of a Recognized Mortgage or after receiving a Foreclosure Transfer described in clause (a) above.

(ii) "Foreclosure Transferee" means any successful bidder, purchaser, transferee or other assignee in a Foreclosure Transfer, including, without limitation, the Recognized Mortgagee (and any designee or nominee of the Recognized Mortgagee). From and after a Foreclosure Transfer, a Foreclosure Transferee shall be deemed to be a "Developer" under this Agreement.

(c) **Foreclosure Subject To Agreement.** Notwithstanding anything in this

Agreement to the contrary, a Foreclosure Transferee shall be subject to all of the terms, conditions and provisions of this Agreement and all Village Approvals; provided, however, that the time period within which a Foreclosure Transferee shall complete construction of the Project and the Public Improvements under Article X hereof shall be extended to the date which is thirty (30) months after the date of the completed Foreclosure Transfer, and upon such Foreclosure Transfer, that date shall be considered to be the Construction Completion Date for all purposes of this Agreement.

13.7. Financing Not Secured by Mortgage. Notwithstanding anything to the contrary in this Agreement, the Developer may obtain financing from an Institutional Lender for the acquisition of the Disposition Parcel and/or construction of the Project, which is not secured by a Mortgage or other lien upon the Disposition Parcel, and the Institutional Lender providing such financing shall be deemed to be a Recognized Mortgagee for all purposes of this Agreement, provided that the Developer (or any successor in interest pursuant to the terms of this Agreement): (a) notifies the Village in writing in advance of any such financing it proposes to enter into; and (b) delivers to the Village a duplicate original of the loan agreement or a copy thereof within ten (10) days of the execution thereof, together with: (i) a certification by the Developer and the Institutional Lender confirming that the copy of the loan agreement is a true copy, and giving the name and post office of the Institutional Lender and (ii) a statement identifying the section of the loan agreement, which sets forth the requirements for the giving of notices to the Institutional Lender.

13.8. Amendments to Agreement Requested by a Recognized Mortgagee. The Village agrees to make such amendments to this Agreement as may be reasonably requested by a Recognized Mortgagee or Institutional Lender, provided that no such amendment shall materially change any of the terms and provisions hereof including, but not limited to, the use of the Village Land and the Publicly Accessible Area, and the Developer's obligations with respect thereto.

#### ARTICLE XIV

#### DEFAULT AND REMEDIES

14.1. Developer Defaults.

(a) Developer Defaults. Each of the following shall constitute a material default by Developer hereunder if not cured within sixty (60) days (or such other time provided below) after a written notice of default (a "Notice of Default") is given by the Village to the Developer:

- (i) the commencement by or against Developer of a case under any chapter of the Federal Bankruptcy Code or any other statute relating to creditors' rights, or the filing of a voluntary or involuntary petition proposing the adjudication of Developer as bankrupt or insolvent, unless the petition is filed or the case is commenced by a party other than Developer and is withdrawn or dismissed within one hundred twenty (120) days after the filing or commencement thereof;

- (ii) an assignment by Developer for the benefit of its creditors, or an appointment of a receiver for the assets of Developer;
- (iii) a transfer or assignment by Developer in violation of the provisions of Article XII hereof, or the granting of a Mortgage in violation of Article XIII hereof;
- (iv) subject to the provisions of this Agreement, a failure by Developer to diligently pursue in good faith, using commercially reasonable efforts under the circumstances, all actions necessary to satisfy all the conditions precedent to, and to consummate, the Closing as provided in this Agreement within thirty (30) days after notice from the Village;
- (v) Developer fails to operate the Project materially in accordance with all applicable terms and conditions of this Agreement;
- (vi) Developer fails to operate the Project materially in accordance with all applicable laws of any Governmental Authority having appropriate jurisdiction thereof;
- (vii) Developer breaches any indemnity made in favor of the Village under this Agreement; or
- (viii) any default in or breach of any other terms or conditions of this Agreement, which default or breach is not remedied within sixty (60) days of written notice from the Village; provided, however, that if any such default is not reasonably capable of cure within the time period for cure set forth above, then provided Developer immediately commences to cure and diligently prosecutes the same, such cure period shall be extended for an additional period of time not to exceed one hundred eighty (180) days, subject to Unavoidable Delays and Absolute Constraints.

14.2. **Remedies Upon A Developer Closing Default.** If a Developer Closing Default occurs and remains uncured beyond any applicable notice and/or grace period, then the Village at its option may terminate this Agreement and upon the termination of this Agreement: (i) the Village may draw upon the full amount of the Letter of Credit and retain the proceeds thereof as liquidated damages; and (ii) any rights of Developer in this Agreement, or arising therefrom, with respect to the Disposition Parcel, the Project Site or the Project, shall terminate, and thereafter neither Developer or the Village shall have any further rights or liability to the other under this Agreement, except as expressly set forth herein.

14.3. **Remedies Upon Default By Developer Subsequent To The Closing.** If after the Closing, but prior to the Project Completion Date, there is an uncured material default by Developer hereunder beyond any applicable notice and/or grace period (other than a Completion Default, for which the exclusive remedy of the Village shall be Completion Damages as provided in Section 10.4(e) of this Agreement), then the Village may, at its option, cancel and terminate this Agreement and upon termination of this Agreement the Village may draw upon the full amount of the Liquidated Damages Bond and retain the proceeds thereof as liquidated

damages. In addition, the (i) Village may draw upon the Performance Bond to finance the completion of the Remedial Work, Public Infrastructure and Public Improvements, and (ii) the Developer shall grade and seed the privately owned portion of the Project Site which is not the Publicly Accessible Area (the "Private Parcel"), and permit use of the Private Parcel by the public in the same manner as the public is permitted to use the Publicly Accessible Area and all restrictions on the use of Publicly Accessible Area shall be suspended other than the Village Park Regulations, until such time as the Developer notifies the Village in writing that it intends to recommence or complete construction of the Project. Notwithstanding the foregoing or any provision in this Agreement, the Village shall defend, indemnify and hold harmless Developer and its successors and assigns and their respective officials, officers, directors, members, managers, employees, volunteers and agents (each, an "Indemnified Party") against any and all liability, claims, suits, demands, damages, costs, interest and expenses (including reasonable legal fees and disbursements incurred in defense thereof) (collectively, "Claims") to which any Indemnified Party may be subject or suffer from bodily injury, personal injury, death or property damage, whether groundless or otherwise, arising from or occasioned by the use by the public of the Private Parcel, unless the liability resulted from the gross negligence or willful misconduct of Developer. This Section 14.3 shall survive the termination of this Agreement regardless of the party who terminated or the reasons therefor and the foregoing indemnities shall not be limited by any enumeration herein as to the amount of required insurance coverage, if any.

14.4. **Default By The Village; Remedies.** In the event that there is a material default by the Village hereunder which has not been cured within sixty (60) days after written notice from Developer, then this Agreement shall, at Developer's option, terminate upon the expiration of such grace period; provided, however, that if any such default is not reasonably capable of cure within the time period for cure set forth above, then provided the Village immediately commences to cure and diligently prosecutes the same, such cure period shall be extended for an additional period of time not to exceed one hundred and eighty (180) days, subject to Unavoidable Delays and Absolute Constraints. In the event of an uncured material default by the Village prior to Closing and the termination of this Agreement by Developer, then the Letter of Credit shall immediately be released and returned to Developer, and Developer shall have all other rights and remedies at law or equity against the Village, including specific performance of this Agreement. In the event of an uncured material default by the Village after Closing, then the Performance Bond and the Liquidated Damages Bond shall immediately be released and returned to Developer, and Developer shall have all rights and remedies at law or equity against the Village, including specific performance of this Agreement. The Developer hereby understands that the Village is under no obligation (except for the covenants of good faith and fair dealings) to grant any of the Village Approvals, and so long as the Village processes the applications for the Village Approvals in good faith and in accordance with all applicable law, then the Village's determination to not grant any one or more of the Village Approvals shall not constitute a default of the Village hereunder.

14.5. **Remedies Not Exclusive.** The Village shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article XIV, including, without limitation, the right after termination of this Agreement, to execute and record or file in the Clerk's Office a written declaration of the termination of this Agreement.

14.6. **Unavoidable Delays.** For the purposes of this Article XIV, neither Developer nor

the Village shall be considered in default under this Agreement if such default or breach is the result of Unavoidable Delays or Absolute Constraints, it being the purpose and intent of this provision that in the event of the occurrence of any Unavoidable Delays or Absolute Constraints, the time or times for the performance of the obligations of Developer or the Village under this Agreement shall be extended for the minimum period of the Unavoidable Delay or Absolute Constraint; provided, however, that the party asserting the same shall, within thirty (30) days after the beginning of any such Unavoidable Delays or Absolute Constraints, have notified the other party in writing stating the cause or causes thereof.

14.7. **Survival.** The provisions of this Article XIV shall survive the Closing and the termination of this Agreement.

## ARTICLE XV

### CONDOMINIUM

#### 15.1. **Creation Of Condominium.**

(a) The dwelling units constructed in connection with the Project may be residential condominium units, and shall be sold subject to this Agreement, the Easement Agreement and the Village Approvals, and all applicable provisions of the New York Condominium Act, if applicable.

(b) Any offering plans, prospectuses and any other documentation required to be prepared, submitted and filed with appropriate governmental agencies in connection with the formation of said condominium (the "Condominium Documents") shall be prepared by the Developer at the Developer's cost and expense and shall expressly state that the condominium association or governing body (the "Condominium Association") is bound by the continuing obligations of the Developer that are set forth in this Agreement, the Easement Agreement, and the Village Approvals, including, but not limited to, the use and continued maintenance of the Publicly Accessible Area, Village Land, Public Improvements and Public Parking (such obligations, the "Continuing Obligations"). The Condominium Documents shall be subject to the prior review of the Village, but only to ensure that the Continuing Obligations are imposed on the condominium association in accordance with the preceding sentence. Developer shall also be solely responsible for the payment of any and all filing fees and expenses related to the formation of said condominium. The Village shall reasonably cooperate with Developer in connection with the formation of the condominium and shall execute all documents reasonably requested by Developer.

15.2. **Publicly Accessible Area.** The Publicly Accessible Area, including the Public Parking, shall be a "common element" of the condominium, which shall be owned by the Condominium Association subject to the rights of public access and use set forth in Section 2.5 of this Agreement, and shall be maintained by the Condominium Association in accordance with the terms and conditions of this Agreement, the Village Approvals and the Easement Agreement.

15.3. **Filing And Formation Of Condominium.** The condominium shall only be

formed after the Closing Date.

15.4. **Survival.** The provisions of Article XV shall survive the Closing, the Project Completion Date and the termination of this Agreement.

## **ARTICLE XVI**

### **PARKING**

16.1. **Parking For The Residential Units And The Public.** As an integral part of the Project, Developer shall, pursuant to the approved Site Plan and this Agreement, construct a parking structure containing a ratio of at least 1.5 residential parking for each residential unit. In addition, Developer shall construct forty five (45) on-grade exterior spaces for non-exclusive public use (the "Public Parking") and two on-grade exterior spaces for residential use. Neither Developer nor its successors and/or assigns shall charge for use of the Public Parking. Developer shall grant to the Village perpetual easements, rights-of-way, or other rights or interests of others as are necessary to ensure public access to and from the Publicly Accessible Area to the Public Parking areas.

16.2. **Maintenance, Repair And Security.** Developer and its successors and/or assigns shall be responsible for and shall pay, at its sole cost and expense, for the maintenance, inspection, repair, paving, lighting, replacement, insurance, security, snow and ice removal of the Public Parking so at all times the Public Parking at the Project is maintained in good order and repair and is safe and passable. Developer shall develop and implement a commercially reasonable and customary security plan for the Public Parking; provided, however, that the Village will at all times require the Village Police Department to provide the same protections for the Public Parking as for similar public facilities in the Village.

16.3. **Rules And Regulations.** Developer and its successor and/or assigns shall adopt uniform rules and regulations for the Public Parking, which rules and regulations shall be substantially consistent with the Village's regulations for public on-street parking. Developer shall install and maintain, at its own cost and expense, all parking, directional, safety, traffic and other signs at the Public Parking as designated by the Village, which shall be maintained by the Developer, its successors and/or assigns as set forth in Section 16.2. The Village shall enforce the rules and regulations for the Public Parking including the adoption of appropriate ordinances in connection therewith.

16.4. **Easements For Construction Of Public Parking.** The Village shall cooperate with Developer and make its best efforts to assure that Developer receives or retains such easements, rights-of-way or other rights or interests as are reasonably necessary to enable Developer to construct and maintain the Public Parking; provided that any costs incurred by the Village to obtain any such rights from a third party shall be paid by Developer. Notwithstanding the foregoing, the Village shall not incur any such costs or expenses without the prior written consent of Developer, which may be withheld in the sole discretion of Developer.

16.5. **Recording.** Developer's obligations under this Article XVI shall be contained in the Easement Agreement to be recorded at Closing.

16.6. **Survival.** The provisions of Article XVI shall survive the Closing, Project Completion Date and the termination of this Agreement.

## ARTICLE XVII

### EXPENSES

17.1. **Payment.** In all instances under this Agreement where Developer or the Village is obligated to pay to or reimburse the other for certain costs and expenses, payment shall be made within thirty (30) days after receipt by the payor of a written invoice from the payee, which shall detail the expenditures for which payment is sought, and which shall contain such other data and/or information as is reasonably necessary to support the claimed expenditures. Any dispute regarding any invoice shall be subject to arbitration in accordance with Article XVIII of this Agreement. The failure of either party to make payment within such thirty (30) day period shall be a material default under this Agreement.

## ARTICLE XVIII

### ARBITRATION

18.1. **Arbitration Provisions.** If any dispute shall arise under any provision of this Agreement which expressly provides for the resolution of such dispute by arbitration, and such dispute shall not be resolved by the parties within thirty (30) days following the delivery by either party of a notice of intention to invoke the provisions of this Section 18.1, either party to this Agreement may initiate arbitration proceedings under this Section 18.1, which shall be conducted in accordance with the following provisions:

(a) **Initiation.** If either party elects to initiate arbitration proceedings hereunder, it shall do so by giving written notice to that effect to the other party. Within seven (7) days after the service of such notice, each party shall appoint an arbitrator and notify the other party thereof, specifying the name and address of the person designated to act as an arbitrator on its behalf. Each arbitrator chosen or appointed pursuant to this Section shall be a disinterested person who shall not be an employee of, consultant to, or otherwise associated with the appointing party and each arbitrator chosen or appointed shall have at least eight (8) years experience in the State of New York in the particular issues involved in a calling connected with the dispute. If either party fails to appoint an arbitrator within the time above specified, then the President or any other executive of the American Arbitration Association shall, on written application of the party not in default with respect to such appointment, appoint an arbitrator for and on behalf of the party which failed to make such appointment.

(b) **Selection Of Arbitrator.** The two (2) arbitrators chosen shall meet within seven (7) days after the notification for the appointment of the last appointed arbitrator and commence

such hearings and investigations as they deem appropriate to resolve the dispute. If the two arbitrators shall not agree on the resolution of the dispute within thirty (30) days after the initial meeting, they shall together appoint a third arbitrator. If they are unable to agree upon such appointment within seven (7) days, then, upon written application of the Village or Developer, the third arbitrator shall be selected by the President or any executive officer of the American Arbitration Association and the person so appointed as third arbitrator shall serve and act together with the two arbitrators first appointed for the purposes of the arbitration. If any person appointed as arbitrator by or on behalf of either party shall die, fail to act, resign or become disqualified, the party by or on behalf of whom such appointment was made shall, within five (5) days after notice of such death, failure to act, resignation or disqualification, appoint some other person as a substitute arbitrator (which substitute arbitrator may not be an employee of, consultant for, or otherwise associated with the appointing party), and, if appointment is not made within such five (5) day period, then the President or any executive officer of the American Arbitration Association shall, upon application of the party not in default, appoint a substitute arbitrator. If the arbitrator shall die, fail to act, resign or become disqualified, a substitute arbitrator shall be appointed in the same manner as is hereinbefore provided for the appointment of the third arbitrator. In the event that any substitute arbitrator or arbitrators shall be appointed, the period within which the third arbitrator shall be appointed (if not previously appointed) shall be deemed extended for not more than seven (7) days after the appointment of such substitute arbitrator or arbitrators. In the event that, for any reason whatsoever, an arbitrator or arbitrators shall not be appointed as provided herein, such arbitrator or arbitrators shall be named or appointed in accordance with the then-prevailing provisions of the laws of the State of New York relating to arbitration. Any arbitrator (or substitute therefor) appointed pursuant to this subsection (ii) or subsection (i) above shall be a competent and impartial person having the qualifications set forth in the provision of this Agreement applicable to the dispute which is the subject matter of the arbitration.

(c) Location Of Meetings. All meetings of arbitrators and other arbitration proceedings under this Section 18.1 shall be held or conducted in Westchester County.

(d) Limited Issues. The arbitration shall be limited to the question(s) at issue. The arbitrators shall render their decision, upon the concurrence of two (2) of their number, within ten (10) days after the appointment of the last appointed arbitrator or substitute arbitrator. The arbitrators shall meet on all business days until they reach a decision. Such decision shall be in writing and counterpart copies thereof shall be delivered to each of the parties, who agree to abide thereby and any judgment may be entered thereon in any court of competent jurisdiction and may be enforced in accordance with the laws of the State of New York. In rendering such decision, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Agreement. The foregoing, however, shall not prevent the arbitrators from determining the applicable provisions of this Agreement and interpreting and construing such provisions. The arbitration conducted pursuant to this Section 18.1 shall be deemed binding arbitration under the laws of the State of New York.

(e) Fees. The parties shall share equally in the fees and expenses of the arbitrator appointed in accordance with this Agreement. The party substantially prevailing in the arbitration shall, at the discretion of the arbitrator, be entitled to recoup all costs of the



arbitrators, together with all reasonable legal and other costs and expenses incurred by such prevailing party in connection with the arbitration.

## ARTICLE XIX

### MISCELLANEOUS

19.1. **Provisions Survive.** Unless expressly provided to the contrary, all provisions of this Agreement shall survive the Closing and the delivery of the deed to the Disposition Parcel; provided, however, that each Certificate of Completion issued to Developer under this Agreement shall be a conclusive determination of the satisfaction and termination of all of the obligations under this Agreement of Developer to construct and complete the portion of the Project which is the subject of the Certificate of Completion. Notwithstanding anything in this Agreement to the contrary: (x) only those provisions of this Agreement that are expressly provided to survive the termination of this Agreement shall survive the Project Completion Date; (y) the delivery to Developer of the last Certificate of Completion required to be issued under this Agreement shall terminate this Agreement, except those provisions that are expressly provided to survive the Project Completion Date and termination of this Agreement; and (z) such Certificate of Completion shall be, and shall state that it is, conclusive evidence of the satisfaction by Developer of all of the obligations on its part to be performed under this Agreement except those that are expressly provided to survive the termination of this Agreement.

19.2. **Notice.** Any notice, demand, request or other communication, which under the terms of this Agreement must or may be given or made or served by either of the parties hereto shall be in writing and shall be given or made by mailing the same by registered or certified mail, express courier, or by overnight delivery or be hand delivered, addressed to the respective addresses hereinbefore given. At the same time any notice is sent to Developer Attn: Louis R. Cappelli, a copy shall be sent to Peter J. Wise, DelBello Donnellan Weingarten Tartaglia Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601. At the same time any notice is sent to the Village, a copy shall be sent to Michael D. Zarin, Zarin & Steinmetz, 81 Main Street, Suite 415, White Plains, New York 10601. Either of the parties hereto or their counsel may designate by notice in writing a new or other address to which such notice or demand shall thereafter be given, made or mailed. Any notice given herein shall be deemed given when posted in the U.S. mail, delivered to the overnight express courier or personally delivered, and shall be deemed complete upon the receipt (or refusal of acceptance) by the party to whom such notice is sent.

19.3. **Conflicts Of Interest, Village Representatives Not Individually Liable.** No member, official or employee of the Village shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the Village shall be personally liable to Developer in the event of a default by the Village for any amount, which may become due to Developer.

19.4. **No Recourse.** All covenants, stipulations, promises, agreements and obligations of Developer and of the Village contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Developer and the Village, respectively, and not of any officer, partner, member, shareholder, agent, servant or employee of Developer or of the Village in any capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect thereof, shall be had against any past, present or future officer, partner, member, shareholder, agent, servant or employee of Developer or of the Village or any member of Developer, either directly or through Developer or any successor thereto or any person executing this Agreement. It is expressly understood that this Agreement is an obligation of Developer and of the Village and that no personal liability whatever shall attach to, or is or shall be incurred by, any such officer, partner, member, shareholder, agent, servant or employee of Developer or of the Village or any member of Developer, either directly or through Developer or any successor thereto or any person executing this Agreement. Any and all such personal liability of, and any and all such rights and claims against, every such officer, partner, member, shareholder, agent, servant or employee of Developer or of the Village under or by reason of the obligations, covenants, or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement

19.5. **Waiver Of Claims And Joinder In Petitions.** Developer hereby waives any and all claims to awards of damages, if any, to compensate for the closing, vacating or change of grade of any street, alley or other public right-of-way within or fronting or abutting on, or adjacent to, the Project Site which is to be closed or vacated pursuant to the Site Plan or this Agreement, or the grade of which is to be changed pursuant the Site Plan or this Agreement, and shall, upon the request of the Village, subscribe to and join with the Village in any petition or proceeding required for such vacation, dedication or change of grade and execute any waiver or other document in respect thereof.

19.6. **Titles Of Articles And Sections.** Any titles of the several Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

19.7. **Counterparts.** This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

19.8. **Governing Law.** This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the State of New York applicable to contracts between residents of the State of New York which are to be performed entirely within the State of New York, regardless of: (i) where this Agreement is executed or delivered; or (ii) where any payment or other performance required by this Agreement is made or required to be made; or (iii) where any breach of any provision of this Agreement occurs, or any cause of action otherwise accrues; or (iv) where any action or other proceeding is instituted or pending; or (v) the nationality, citizenship, domicile, principal place of business, or jurisdiction of organization or domestication of any party; or (vi) whether the laws of the forum jurisdiction otherwise would apply the laws of jurisdiction other than the State of New York; or (vii) any combination of the foregoing.

19.9. **Estoppel Certificates.** Each party hereto agrees, within ten (10) days following request therefore from the other party, but not more than two (2) times in a calendar year, to deliver to the requesting party a certificate stating, if such be the case, that this Agreement is in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified, and stating the modifications); that, to the best knowledge of the individual signing the certificate, no default exists hereunder on the part of the requesting party or if any default exists, specifying the nature and period of existence thereof; and containing such further information as the requesting party may reasonably request. Each such certificate may be relied upon by any prospective mortgagee or transferee of the requesting party. The requesting party shall pay the reasonable costs and expenses (including reasonable attorneys' fees) incurred by the responding party in connection with the certificate.

19.10. **Successors And Assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their permitted successors and/or assigns and legal representatives.

19.11. **No Oral Modification.** This Agreement may not be amended, nor shall any waiver, change, modification, consent or discharge be affected, except by an instrument in writing executed by or on behalf of the party against whom enforcement of any amendment, waiver, change, modification, consent or discharge is sought.

19.12. **Further Assurances.** The Village and Developer agree that at any time or from time to time after the execution of this Agreement and whether before or after the Closing, they shall, upon request of each other, execute and deliver such further documents and do such further acts and things as such party may reasonably request in order to effect fully the purpose of this Agreement.

19.13. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

19.14. **Prior Agreements.** This Agreement shall supersede all prior agreements between the parties, including, but not limited to, the Development Agreement, the Amended and Restated Development Agreement and the Modified and Amended Restated Development Agreement.

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

extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of another party.

19.16. **No Partnership Created.** It is understood and agreed that no agreement of partnership is intended hereby and nothing herein shall be deemed or construed to constitute the Village jointly the partner of Developer or constitute either the agent of the other such as to permit or empower the Village or Developer to bind the other to financial or other obligations to third parties nor constitute or give rise to any joint ownership or joint venture in violation of any constitutional or other provision of New York law.

19.17. **Performance Of Governmental Functions.** Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement or any approvals or consents by the Village in connection with the Project shall limit or impair the Village from exercising or performing any regulatory, policing or permitting functions or obligations, including but not limited to the issuance of a Special Use Permit and Site Plan approval.

19.18. **Recreation Fee Waiver.** In consideration of the mutual covenants herein and the undertaking by the Developer of substantial recreational improvements on the Village Land and Publicly Accessible Area, the Village waives any requirement for recreational fees including, but not limited to, those fees which are permitted to be imposed under any State or local law.

19.19 **Termination of Escrow Agreement.** The Escrow Agreement made between the parties and dated March 18, 1999 shall be terminated as of the Closing Date, so long as all outstanding amounts to be paid by Developer including those set forth in the Village Approvals have been paid.

19.20. **Inconsistencies.** Notwithstanding any provision of this Agreement, the Easement Agreement or the License Agreement, in the event of any inconsistency between any term of: (a) this Agreement and the Easement Agreement, then this Agreement shall control; and (b) this Agreement and the License Agreement, then the License Agreement shall control.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Land Acquisition and Disposition Agreement to be executed by their authorized representatives as of the date above written intending to be bound hereby.

HARBOR SQUARE, LLC

By: Ossining Realty Associates, LLC

By: \_\_\_\_\_  
Louis Cappelli, Managing Member

VILLAGE OF OSSINING

By: \_\_\_\_\_  
Linda Abels, Village Manager