AMENDMENTS TO LAND DISPOSITION AGREEMENT

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 **Brownfield Cleanup Program**. The Developer has applied to have the Project accepted into the New York State Brownfield Cleanup Program, pursuant to ECL Article 27, Title 14 ("Brownfield Cleanup Program"). Any and all costs incurred by the Developer in connection with applying to be accepted into the Brownfield Cleanup Program shall be the sole responsibility of, and be paid by, Developer. When the Project is accepted into the Brownfield Cleanup Program, (i) the Village shall be released from any and all liabilities, obligations and costs, including Remediation Costs, in connection with any and all Remedial Work, and Sections 11.2(c) and (e) shall be of no further force and effect, (ii) the definition of "Remedial Work" shall be modified to include any changes to the Remedial Action Plan and License Agreement required by the New York State Department of Environmental Conservation, and (iii) all other provisions of Article XI, except for Sections 11.2(c) and 11.2(e), shall remain in full force and effect.

11.4. **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 Thirty Thousand Dollars ($30,000.00); 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.

11.5. **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.

11.6. **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 XIX

19.19 **Modification of Escrow Agreement**. The Escrow Agreement made between the parties dated March 18, 1999, is modified as of the Closing Date, so that paragraph (3) of the Escrow Agreement ("Use of Escrow Fund") shall read as follows: "The Escrow Fund shall be used and maintained for all expenses, including legal fees, incurred by the Village in connection with the Village's defense of the law suits titled DeBerardinis v. Village of Ossining, et al., Index No. 06/03284 and Gourdine v. Village of Ossining, et al., Index No. 06/6544, including all appeals therefrom." The Escrow Agreement shall be terminated as of the latter date that the foregoing law suits are discontinued with prejudice, and any Orders, Decisions or Judgments in connection with the foregoing law suits become final and unappealable.

19.21 **Defense of Potential Future Claims.** If any suit, proceeding, claim or demand is brought or made against the Village with respect to the Project and/or any Governmental Approvals, other than the two law suits identified in Section 19.19, 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, (i) pursuant to the terms of the Escrow Agreement if the Escrow Agreement is still in force and effect, or (ii) if the Escrow Agreement has been terminated pursuant to Section 19.19, then said reasonable payments to be made on a monthly basis; and (iii) 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.

19.22 **Indemnification.** The Developer shall indemnify and hold harmless the Village and its successors and assigns, and the Village's employees, officials and agents, in their

respective official capacities, from and against any suit, proceeding, claim or demand brought or made against the Village with respect to the Project and/or any Governmental Approvals, of whatever kind or nature, contingent or otherwise, whether incurred or imposed within or outside the judicial process.