

**AMENDED AND RESTATED**  
**PROJECT DEVELOPMENT AGREEMENT**  
**AND CONTRACT FOR SALE OF LAND**

This Amended and Restated Project Development Agreement and Contract for Sale of Land (this “Agreement”) is made and entered into as of the \_\_\_\_\_ day of July, 2009, between the City of South Euclid, Ohio, a municipal corporation organized and existing under the Constitution and Laws of the State of Ohio and a duly adopted charter (the “City”); and Coral SECC, LLC, an Ohio limited liability company (the “Developer”). As used herein, the term “Effective Date” shall mean the last date of execution and delivery of this Agreement by the City and the Developer. Words and terms used herein and not otherwise defined shall have the meanings set forth in Article XII hereof.

**WITNESSETH:**

WHEREAS, the City and the Developer hereby enter into this Amended and Restated Project Development Agreement and Contract for the Sale of Land for the development of certain properties in the City including the property currently known as the Cedar Center Shopping District, which properties are depicted on Exhibit A attached hereto (the “Project Site”) and identified by the tax parcel numbers set forth on Exhibit B attached hereto; and

WHEREAS, except as provided herein, the City has agreed to deal solely and exclusively with the Developer in regard to the development of the Project Site; and

WHEREAS, the City owns the Project Site; and

WHEREAS, the Developer has proposed to re-develop the Project Site either (i) by acquiring the same from the City (or from the Cleveland-Cuyahoga County Port Authority or Cuyahoga County, as issuer of the Bonds hereinafter described (in such capacity, the “Issuer”)),

and by conveying parts of the Project Site to, as of yet, unidentified buyers or retailers, for lease or occupation by said retailers and/or buyers, or (ii) by assisting the City in conveying parts of the Project Site to such buyers or retailers for lease or occupation by said retailers or buyers (any such buyers or retailers, as owner or lessee, are hereinafter referred to “Users”), and subject to any modifications which may be agreed upon by the City and the Developer, the City has requested that the Project be a mixed-use development comprised of a combination of retail, office, residential, and/or hospitality uses, together with a public green space sufficient in size to accommodate events such as band concerts, farmers’ markets, and art festivals, which may include the construction of one or more of the following types of uses: retail, hotel, restaurants, medical office, office, health care, educational, governmental, and residential space in structures up to sixty-five (65) feet in height (such retail, hotel, restaurant, medical office, office, health care, educational, governmental, and residential improvements are referred to hereinafter together as the “Private Improvements”).

WHEREAS, the City proposes to acquire and construct, or to cause the Developer or a User to acquire and construct, as construction agent for and on behalf of the City or as otherwise directed by the City, public infrastructure improvements which will benefit the Private Improvements including, but not limited to, public parks, streets, water and sewer facilities, sidewalks, streetscapes, lighting and public surface parking (such public infrastructure improvements, are referred to hereinafter together as the “Public Infrastructure Improvements” and, together with the Private Developer Improvements (as hereinafter defined), the “Improvements”) on or serving the Project Site. The Private Improvements for any Phase of the Project, the Public Infrastructure Improvements for any Phase of the Project, the rights and obligations of the parties, and the construction and operation of the Final Private Improvements

for any Phase of the Project (which are defined as the Private Improvements for such Phase as finalized and approved pursuant to Section 3.2(a)(i) of this Agreement) are referred to hereinafter together as the “Project”; and,

WHEREAS, in furtherance of the financing of the Public Infrastructure Improvements, the City proposes to enact one or more ordinances (each, a “TIF Ordinance” and collectively, the “TIF Ordinances”) to declare the Private Improvements to the Project Site or the Phases thereof to be a “public purpose” pursuant to Section 5709.40 et seq. of the Ohio Revised Code (“Tax Increment Statutes”); and

WHEREAS, the City has agreed to coordinate efforts with the Developer to arrange for the appropriate economic tools to allow the project to move forward, which efforts shall include but are not limited to (1) using its best efforts in assisting in negotiating an agreement (“School Compensation Agreement”) among the City, the Developer and the Cleveland Heights-University Heights City School District (“CH-UH District”) and the execution of various contracts, certifications and other documents related thereto, (2) enacting the TIF Ordinances and (3) coordinating the timing of enactment of the TIF Ordinances in order to maximize revenue available to pay for Public Infrastructure Improvements; and

WHEREAS, the City and the Developer have agreed to enter into this Agreement for the purposes set forth herein; and

WHEREAS, the City believes that the redevelopment of the Project Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, and welfare of its residents, and are necessary for the purpose of the creation of jobs and employment opportunities, and to improve the economic welfare of the people of the City; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth herein, the Developer and the City hereby covenant and agree as follows:

## **ARTICLE I**

### **PRELIMINARY OBLIGATIONS OF THE CITY AND THE DEVELOPER**

#### **Section 1.1. Preliminary Activities.**

(a) The development of the Project Site shall be divided into four or more Phases, as follows:

(i) Phase I shall comprise development of the easterly parcels of the Project Site located on Cedar Road, more fully described on Exhibit A-1 (the “Phase I Parcels”);

(ii) Phase II shall comprise development of the westerly parcels of the Project Site located on Cedar Road, more fully described on Exhibit A-2 (the “Phase II Parcels”);

(iii) Phase III shall comprise development of the parcels of the Project Site located north of the Phase II Parcels, more fully described on Exhibit A-3 (the “Phase III Parcels”); and

(iv) Phase IV shall comprise development of the parcels located north of the Phase I Parcel and east of the Phase III Parcel, more fully described on Exhibit A-4 (the “Phase IV Parcels” and, together with the Phase I Parcels, the Phase II Parcels and the Phase III Parcels, the “Parcels”).

The parties acknowledge that, with the exception of the Phase I Parcels, the Parcels may be developed in any chronological order, notwithstanding their numerical designation. The parties further acknowledge that with their mutual consent, a particular Phase may be modified

to include different Parcels comprising the Project Site.

(b) At its own cost and expenses, Developer shall engage a civil engineer and other appropriate professionals, each of whom shall be reasonably acceptable to the City as evidenced by the City's written approval, to prepare the following for delivery to the City:

(i) A Master Plan for the Project Site, which shall identify, *inter alia*, the proposed land uses of the Project Site and each Phase thereof, the proposed lot split for each of the Parcels described in (b) above, required Public Infrastructure Improvements which benefit or serve the Project Site and other public improvements for the use and benefit of the Project Site, a preliminary determination of compliance with Zoning code or necessary variances or conditional use permits, and other matters agreed to by the City and the Developer in order to maximize the value of the Project Site and the uses thereof for the benefit of the City; and

(ii) A Preliminary Site Plan for the Phase I Parcels, including, without limitation, ingress and egress for the Phase I Parcels, preliminary water and sewer requirements, preliminary requirements for all other utilities, parking requirements consistent with City requirements, and any preliminary proposed building or Zoning variances or special use permits (the "Preliminary Phase I Site Plan").

(iii) A proposed development schedule and a list of proposed uses for the Phase I Parcels, together with a description of the status of lease negotiations for such uses;

In the event that the items required by this Section 1.1(b) are not delivered to the City by

August 31, 2009, unless the City otherwise agrees to an extension, the City may terminate this Agreement without further notice to Developer, and Developer shall not be reimbursed for any expenses incurred in preparing the Master Plan and Preliminary Phase I Site Plan and the parties are relieved of any further obligations to each other under this Agreement.

(c) Within fifteen business days after the Developer's submittal of the Master Plan and the Preliminary Phase I Site Plan in a form sufficient for City review, the City will review the Master Plan and Preliminary Phase I Site Plan and the City will notify the Developer in writing whether the City (1) approves the Master Plan Preliminary and Preliminary Phase I Site Plan or (2) disapproves the Master Plan and Preliminary Phase I Site Plan in good faith, stating specifically the reasons for such disapproval. The approval of the City shall not be unreasonably withheld, delayed or conditioned. In the event that the City disapproves the Master Plan and Preliminary Phase I Site Plan, the Developer at its option may terminate this Agreement without further obligation to the City or within thirty days of such disapproval, or within such longer period as the City and Developer may agree, may submit a revised Master Plan and Preliminary Phase I Site Plan to the City, which the City will review in the manner provided in the first sentence of this subsection (c). If the Developer does not submit a revised Master Plan and Preliminary Phase I Site Plan to the City within thirty days of the City's disapproval of any Master Plan and Preliminary Phase I Site Plan or revised Master Plan and Preliminary Phase I Site Plan, the Developer shall be deemed to have terminated this Agreement and the parties shall have no further obligation to each other except as otherwise specifically provided herein. If the Developer has not submitted an acceptable Master Plan by January 1, 2010 (or such later date as the City and the Developer may agree to), the City at its option may terminate this Agreement without further obligation to the Developer and the Developer shall not be reimbursed for any

expenses incurred in preparing the Master Plan and Preliminary Site Plan, and the parties are relieved of any further obligations to each other under this Agreement.

(d) If the Master Plan and the Preliminary Phase I Site Plan are approved by the City, the Developer shall submit to the City Preliminary Site Plans for Phase II, Phase III and Phase IV in accordance with Section 1.1(b)(ii) and Site Plans prepared in accordance with Section 3.2 (each, a “Detailed Site Plan”) for each Phase in accordance with the following schedule:

(i) A Preliminary Site Plan for the next Phase shall be submitted to the City not later than April 1, 2010, and a Detailed Site Plan shall be submitted to the City not later than six (6) months after the City’s approval of the Preliminary Site Plan for that Phase;

(ii) A Preliminary Site Plan for the third Phase to be developed shall be submitted to the City not later than April 1, 2011, and a Detailed Site Plan shall be submitted to the City not later than six (6) months after the City’s approval of the Preliminary Site Plan for that Phase;

(iii) A Preliminary Site Plan for the final Phase shall be submitted to the City not later than August 1, 2011, and a Detailed Site Plan shall be submitted to the City not later than six (6) months after the City’s approval of the Preliminary Site Plan for that Phase.

In the event that the Developer fails to submit a Preliminary Site Plan or Detailed Site Plan for any Phase to the City in accordance with the schedule set forth above, the City may, at its option, terminate future obligations under this Agreement without further obligation to the Developer with respect to the Site Plans not delivered or extend the time for delivery; provided, however,

that the obligations of the City and the Developer to each other with respect to any Phase as to which a Preliminary Site Plan has been approved shall continue notwithstanding termination of this Agreement as provided in this sentence. Any Preliminary Site Plans submitted by the Developer to the City Council pursuant to this Section 1.1(d) shall be reviewed and approved or disapproved by the City in the manner provided in Section 1.1(c) above and any Detailed Site Plan shall be reviewed and approved or disapproved by the City in the manner provided in Section 3.2 below; the City may disapprove any Preliminary Site Plan for any Phase other than the Phase I Site Plan in its reasonable discretion including, without limitation, the City's determination to self-develop the portion of the Project Site included within that Preliminary Phase Site Plan or the City's determination to permit another developer or User to develop the portion of the Project Site included in such Preliminary Phase Site Plan.

**Section 1.2. Option to Purchase/Right of First Refusal.**

(a) Option to Purchase. The City hereby grants to Developer the sole and exclusive right and option (the "Purchase Option") to purchase any parcels comprising a part of the Project Site for which a Preliminary Site Plan has been approved, on the terms set forth in this Section 1.2, in Section 5.1 hereof and in Exhibit D attached hereto, as applicable. Developer shall have the right to exercise its Purchase Option by delivering written notice to the City at any time after the City's approval of the applicable Preliminary Site Plan, but prior to the date that is thirty (30) days after the City's approval of the applicable Preliminary Site Plan. The Developer shall pay at closing a purchase price equal to the Fair Market Value (as defined in Exhibit D) of the applicable Parcels. In such instance, the City and the Developer shall negotiate in good faith to mutually agree upon the Fair Market Value in accordance with the criteria set forth in Exhibit D. Provided the Developer has provided written notice to the City exercising its

Purchase Option, the parties shall conduct negotiations regarding the Fair Market Value during the thirty (30) day period after the City's receipt of such notice. In the event the City and the Developer are unable to mutually agree upon the Fair Market Value within such thirty (30) day period (the "FMV Negotiation Period"), the provisions of Section 10 of Exhibit D shall apply. Within fifteen (15) business days after determination of the Fair Market Value as provided herein, the Developer shall deposit earnest money equal to five percent (5%) of the Fair Market Value with the Escrow Agent (defined below) in the form of cash, which shall be applied against the Developer Purchase Price. Such deposit shall be refundable if Developer notifies the City within ninety (90) days after the determination of the Fair Market Value that Developer is terminating the Purchase Option. If the Closing Date for any Phase has not occurred within ninety (90) days after the determination of the Fair Market Value, Developer shall deposit additional earnest money equal to five percent (5%) of the Fair Market Value. In the event of breach of this Agreement by the Developer, the City shall receive the earnest money deposit as liquidated damages in complete settlement of any and all claims the City may have against the Developer but solely with respect to the purchase of the Parcels for which the Purchase Option was exercised.

(b) Right of First Refusal. The Developer shall have a right of first refusal to purchase any portion of the Project Site for which a Preliminary Site Plan has been approved, which right shall exist and remain until twelve (12) months after approval of the applicable Preliminary Site Plan, or until the such Parcels are sold by the City pursuant to the terms of this Section 1.2(b). The City shall provide written notice to the Developer any time the City receives a bona-fide offer for the purchase of any Parcels within an approved Preliminary Site Plan including all principal terms of such offer. To exercise this right, the Developer shall notify the

City of its intent to match such bona-fide offer that the City presents to Developer, in writing, within fifteen (15) business days after receipt by the Developer of such bona-fide offer. The Developer's failure to respond within fifteen (15) business days shall be deemed a waiver of Developer's right of first refusal with respect to the offer presented to the City, whereupon the City shall have one (1) year to consummate such transfer of all or a portion of the Project Site at the same purchase price, with the same purchase date, with the same earnest money deposit and on substantially the same other terms and conditions as such bona-fide offer previously presented to the Developer, failing which the Developer shall again have a right of first refusal for subsequent offers for the purchase of all or a portion of the Project Site for which a Preliminary Site Plan has been approved. Prior to accepting any third party offer to lease, ground lease, sell or otherwise transfer (by operation of law or otherwise) all or any portion of the Project Site for which a Preliminary Site Plan has been approved, the City shall agree that the City shall first submit to the Developer all bona-fide offers to transfer the Project Site or a portion thereof prior to City's acceptance of such offer, in order that the Developer may exercise its right of first refusal.

## **ARTICLE II**

### **DUE DILIGENCE**

**Section 2.1. Environmental Reports.** The City has obtained a Phase I environmental study and a Phase II environmental study of the real property comprising the Project Site, and has provided to the Developer all information in the City's possession related to the condition of the Project Site including the Phase I and Phase II environmental studies and any tests, reports, data, documents and related information concerning the condition of the Project Site. The City acknowledges and agrees that it will be performing additional environmental studies and

assessments in respect of the Project Site. The City agrees to consult with the Developer to keep it apprised as to the status of such studies and work, and to provide the Developer with reasonable advance notice of the performance of any on-site studies and/or work in order to allow the Developer to be present during the performance of the same. The Developer shall have the right to reasonably approve the City's plans and specifications for any environmental remediation work. The City agrees to provide the Developer with copies of such additional tests, reports, data, documents, and related information concerning the condition of the Project Site promptly following the City's receipt thereof.

The City has entered into a Community Reinvestment Fund Loan Agreement and a Brownfield Redevelopment Loan Agreement, each dated December 5, 2008 (collectively, the "Brownfield Loan") with Cuyahoga County, Ohio (the "County") pursuant to which the County has made a forgivable loan to the City for the purposes of site acquisition, demolition and environmental remediation of the Project Site. Pursuant to the provisions of the Completion Guaranty dated December 5, 2008, the Developer has provided a limited guarantee of the obligations of the City under the Brownfield Loan, and in connection therewith has entered into a letter agreement with the City dated December 1, 2008 (the "Letter Agreement"). In accordance with the provisions of the Brownfield Loan, the City has commenced demolition and remediation of the Project Site. The City and the Developer agree to comply in all material respects with the provisions of the Brownfield Loan and the Letter Agreement.

The Developer shall have the right to enter the Project Site from time to time for the purpose of conducting the Developer's investigations, tests and studies, including, without limitation, the right to conduct surveys, soil borings and other geological, environmental, wetlands and hydrologic studies; to conduct engineering, traffic, architectural and historical

studies; and to inquire regarding the status of Zoning, wetlands, and the availability of utilities. The City agrees to cooperate with the Developer, and to cause its agents and employees to cooperate with the Developer, in connection with the rights granted pursuant to this Section 2.1. In the event that the Developer does not acquire the Project Site from the Issuer as provided in Section 5.1(b), then the Developer shall repair any physical damage to the Project Site caused by the Developer's investigations, tests and studies; and the Developer shall indemnify and hold the City harmless from any and all claims, loss, cost, damage, liability and expense therefore caused solely by the Developer or its agents, employees or contractors in the performance of such investigations, tests or studies.

**Section 2.2. Title and Survey.**

(a) Upon approval of a Site Plan and upon exercise of its Purchase Option or right of first refusal pursuant to Section 1.2, in addition to paying the cost of Title Insurance as provided in Section 5.1(e), the Developer shall at its own cost and expense obtain a commitment for Title Insurance (the "Title Commitment") from the Title Company for each parcel within the Project Site for which a Site Plan has been approved. Not later than ten (10) business days after receipt of the Title Commitment, the Developer shall serve upon the City a notice specifying exceptions to title, if any, which the Developer approves and those to which the Developer reasonably objects (the "Title Defects"). Any exceptions appearing after issuance of the Title Commitment and/or survey shall also be deemed Title Defects unless approved in writing by the Developer.

(b) Upon receipt by the City of the Developer's notice of Title Defects, if any, the City shall diligently pursue the removal of the Title Defects at its sole cost. The City shall have thirty (30) days after receipt of notice in which to cure such Title Defects (or, if the Title

Defects are not readily curable within said thirty (30) day period, then the City may have such additional time as the Developer may permit in writing, in which case, the Purchase Option or right of first refusal may, at the Developer's option, be extended accordingly). Should the City be unable to cure the Title Defects prior to the expiration of said thirty (30) day period, the City shall notify the Developer of such fact within five (5) days after the expiration of such thirty (30) day period, and the Developer shall have the option to: (i) accept the Purchase Option or right of first refusal of the Project Site or portion thereof subject to the Title Defects; or (ii) terminate this Agreement as to the applicable portion of the Project Site upon written notice to the City.

(c) The Developer shall notify the City of its election of alternative (i) or (ii) above within ten (10) days after receipt of notice from the City of the City's inability or ability to cure the Title Defects. If the Developer fails to so notify the City within the aforesaid time period, the Developer shall be deemed to have elected alternative (i) above. If the Developer elects alternative (ii) above, an amount equal to the Deposit shall be paid to the Developer within ten (10) business days after the date of termination.

### **ARTICLE III**

#### **DEVELOPMENT OF PROJECT; APPROVAL OF PROJECT PLANS, ZONING VARIANCES AND ISSUANCE OF BUILDING PERMITS**

**Section 3.1. Agreement to Develop Project Site.** Subject to the terms and conditions of this Agreement, upon approval of a Detailed Site Plan and purchase of any portion of the Project Site as provided herein, the Developer agrees to develop the Parcels comprising the approved Detailed Site Plan by constructing the Final Developer Improvements shown on the Detailed Site Plan for that Phase and, acting as Construction Agent for the City or the Issuer in accordance with the terms of a Construction Agency Agreement in substantially the form set forth in Exhibit F attached hereto, the Public Infrastructure Improvements in accordance with the Detailed Site

Plans to be approved pursuant to the terms of this Agreement together with all site improvements set forth in the Detailed Site Plans. So long as the Bonds are outstanding, the City shall take no action by way of legislative or administrative rezoning which would adversely affect the use of the applicable portions of the Project Site and Project.

**Section 3.2. Detailed Site Plans.**

(a) Submissions and Approvals.

(i) Building Plans. From time to time after a Preliminary Site Plan for any Phase is approved, the Developer shall submit to the City for the approval of the City Planning Commission and other appropriate City bodies complete engineering and architectural plans for the construction of the Improvements (“Proposed Construction Drawings”) shown on the Preliminary Phase Site Plan which the Developer then intends to construct. Within twenty (20) days after the Developer’s submittal, the City agrees to cause the City Planning Commission to review the Proposed Construction Drawings of the Improvements and will notify the Developer in writing whether the City (1) approves the Proposed Construction Drawings for the Improvements; or (2) disapproves the Proposed Construction Drawings of the Improvements, stating specifically the reasons for such disapproval. The approval of the City shall not be unreasonably withheld, delayed or conditioned. The parties agree to use good faith efforts to expeditiously agree upon the Proposed Construction Drawings for the Improvements. When finally approved, the Proposed Construction Drawings for any Phase shall be known as the “Detailed Site Plans” for that Phase.

(ii) Other Information. The Developer shall submit all other required documentation to the City necessary to develop the Project Site or the parcels comprising a Phase thereof in accordance with Detailed Site Plans at the times provided for in, and in accordance with, applicable City ordinances, resolutions, rules, regulations and official policies. The City and the Developer acknowledge that the Project Site has been approved for development in accordance with all governmental rules and regulations. Upon approval of the Detailed Phase I Site Plan, the City, at the request of the Developer, agrees to vacate Stan Hope Drive and/or Fenwick Road. The City shall coordinate the timing of the vacation of such roads with the Developer.

(iii) Changes. The Developer agrees that any material modifications to the Detailed Site Plans for any Phase through change orders or otherwise shall require approval by the appropriate department, committee or division of the City, which approval shall not be unreasonably withheld, delayed or conditioned.

(iv) Permits. Permits necessary for commencement of construction of the Improvements shall be issued by the City as soon as possible after application for such permits. The City agrees to promptly notify the Developer of any objection to such application so that an approval from the City can be obtained in a thirty (30) day time period. The approval of the City shall not be unreasonably withheld, delayed or conditioned. Any review or approval by the City is not to be construed as a review or approval of architectural or structural soundness, nor of the means and methods of construction. No approval given by the City shall relieve the Developer from its obligation to comply with all applicable federal,

State and local laws and regulations in connection with the construction of the Developer Improvements, and including without limitation compliance with the City's usual requirements for preparation and submission of applications for building permits together with necessary construction plans therefor.

#### ARTICLE IV

##### **CONSTRUCTION OF IMPROVEMENTS**

**Section 4.1. Developer Improvements.** Subject to Force Majeure, if the Developer acquires title to any Parcels comprising a Phase pursuant to a Purchase Option or right of first refusal, the Developer shall commence construction of the Final Developer Improvements for any Phase no later than ninety (90) days following the latest to occur of the following (the "Commencement Date"): (i) the Closing Date for that Phase; (ii) the City's issuance of all permits or approvals necessary to commence construction; and (iii) the City's or the Developer's obtaining any other necessary State or federal permits or approvals, if required and necessary to commence construction. The Developer shall complete all exterior construction of the Final Developer Improvements for the applicable Phase within (a) one hundred eighty (180) days after the Commencement Date for Phases I, II and III, and (b) twenty-four (24) months after the Commencement Date for Phase IV, in each case subject to Force Majeure.

**Section 4.2. Public Infrastructure Improvements.** The Developer will construct the Public Infrastructure Improvements included in any approved Phase Site Plan as construction agent for the City or the Issuer in conformity with all applicable City ordinances, resolutions, rules, regulations and official policies, including, without limitation, the Alternate Bidding Procedures set forth in Exhibit E hereto and the Construction Management Agreement. Upon Developer's purchase of the Project Site or any portion thereof pursuant to Section 1.2 hereof,

the City will acquire from the Developer the Easement in any land on which the Public Infrastructure Improvements are to be located and will acquire from the Developer any Public Infrastructure Improvements constructed thereon, as more fully described in Section 6.1 hereof. No construction manager for the Public Infrastructure Improvements may be engaged by Developer without the prior written approval of the City, which approval shall not be unreasonably withheld.

**Section 4.3. Force Majeure.** The Developer shall not be considered in default in its obligations to be performed under this Agreement, if delay in the performance of such obligations is due to causes beyond its reasonable control and without its fault or negligence, including but not limited to, acts of God or of a public enemy, acts of the federal or state government, acts or delays of the other party, fires, floods, weather conditions which preclude construction, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or material men due to any of such causes, delays due to Project Site environmental requirements or other events or conditions beyond the reasonable control of a party and without its fault or negligence (herein referred to as “Force Majeure”); it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall within 30 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay.

**Section 4.4. Quality of Work.** All work done in connection with the construction or placement of all Improvements (including any demolition and excavation work), any renovation, rehabilitation, restoration or repair thereto performed by either the City or the Developer (whether acting for itself or as Construction Agent for the Port Authority or the City) shall be done in a good and workmanlike manner, free from faults and defects and in compliance with the applicable building and zoning laws and with all laws, ordinances, orders and requirements of all governmental authorities subject to the Developer's right to contest or appeal the same pursuant to Ohio law.

**Section 4.5. Support: Indemnification.** At all times during the demolition, excavation and/or construction of Improvements or any repairs, rehabilitation, restoration, alterations thereto or replacements thereof, the Developer shall provide lateral and sub-adjacent support to adjacent properties and any improvements whatsoever upon said properties in compliance with generally accepted engineering practices and the recommendations of its engineers. The Developer shall further indemnify and hold harmless the City from and against such damages, liabilities, obligations, penalties, claims, costs, charges and expenses, including architects' and reasonable attorneys' fees which may be suffered or incurred by or imposed upon the City solely by reason of the Developer's negligent demolition, excavation and construction and/or the Developer's failure to provide the support required by this paragraph.

**Section 4.6. Employment and Worker Safety Laws.** The Developer shall at all times while constructing, installing, maintaining, or repairing the Improvements, comply with Workers' Compensation laws and regulations of the State, Social Security laws and regulations, and all rules and regulations issued pursuant to the Occupational Safety and Health Act.

The Developer expressly acknowledges and agrees that all wages paid to laborers and mechanics employed to construct the Public Infrastructure Improvements shall be paid at not less than the prevailing rates of wages for laborers and mechanics then payable in the same trade or occupation in the County, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates, provided that if such construction is to be performed by Developer's regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of this Agreement, then, in that event, the rate of pay provided under the collective bargaining agreement may be paid to those employees. The Developer shall comply, and shall require compliance by all contractors or subcontractors working on the Public Infrastructure Improvements, with all applicable requirements of Sections 4115.03 through 4115.16, Ohio Revised Code, including, without limitation, (i) obtaining from the Ohio Department of Commerce its determination of the prevailing rates of wages to be paid for all classes of work called for in constructing the Public Infrastructure Improvements, (ii) obtaining the designation of a Prevailing Wage Coordinator for the Public Infrastructure Improvements pursuant to Section 4115.032, Ohio Revised Code, and (iii) ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required under Section 4115.05, Ohio Revised Code. At such time as the City or the Issuer requests, the Developer shall be required to provide the City with evidence, satisfactory to the City, that there has been compliance with the foregoing requirements.

**Section 4.7. Insurance Requirements.** From the date of execution of this Agreement through and until the completion of construction or later as set forth below, the Developer shall

obtain and/or cause its contractors to maintain all policies of insurance as required by this Section of the Agreement.

(a) Builder's Risk Insurance. During construction of any or all of the Improvements, the Developer shall procure and maintain, and/or cause its contractors or agents to procure and maintain all builders' risk including fire insurance with extended coverage upon the Improvements then to be constructed in the amount of one hundred percent (100%) of the replacement cost thereof.

(b) Hazard Insurance. Upon completion of construction, the Developer shall insure the Final Developer Improvements thereon with "all risk" property insurance insuring the full replacement cost of the Final Developer Improvements as erected on the Project Site, provided the Developer may provide all or part of such coverage pursuant to any self-insurance program maintained by the Developer.

(c) Public Liability Insurance. During construction and until completion of construction of the Improvements, the Developer shall insure against all claims for personal injury or death or property damage occurring in or about the portion of the Project Site which Developer has acquired, such Public Infrastructure Improvements and Final Developer Improvements thereon, with limits not less than Two Million Dollars (\$2,000,000) in the event of bodily injury or death of one person, and not less than Five Million Dollars (\$5,000,000) in the event of bodily injury or death to any number of persons in any one occurrence, and broad form property damage coverage of not less than Five Million Dollars (\$5,000,000), which insurance may be provided by an umbrella policy. During construction of the Improvements, the City shall be named as an additional insured on the public liability insurance policies required by this Section. All insurance shall be effected by valid enforceable policies issued by insurers

authorized to do business in the State of Ohio and approved by the City in its reasonable discretion. Certificates of such insurance shall be delivered to the City at least one week prior to the commencement of construction; certificates of replacement policies shall be delivered to the City at least fifteen (15) days prior to the expiration of the policy. All such policies shall contain agreements by the insurers that the policies shall not be cancelled except upon fifteen (15) days prior written notice to the Developer and the City; the Developer shall promptly forward the City a copy of any such notice of cancellation.

**Section 4.8. Certificate of Completion.** For purposes of this Agreement, “completion” shall mean construction of all Improvements described in an approved Detailed Site Plan for a Phase of the Project. Notwithstanding anything herein to contrary, the City shall not unreasonably withhold issuance of any certificate of completion or a certificate of occupancy. Promptly after completion of any portion of the Final Developer Improvements in accordance with this Agreement which may be subject to occupancy, the City will furnish the Developer with an appropriate instrument so certifying (a “Certificate of Occupancy”). The certification by the City shall be a conclusive determination of satisfaction and termination of only the covenants in this Agreement with respect to the obligations of the Developer and its successors and assigns to construct such portion of the Final Developer Improvements and the dates for the beginning and completion thereof.

**Section 4.9. Special Provisions.**

(a) The Developer shall perform any necessary repairs and replacements to the façade of the masonry wall presently located at the northern line of the Project Site shown on the Detailed Site Plans so that such wall is structurally sound, as determined by the City’s

Building Commissioner, and also provide landscaping and buffering as shown on the Detailed Site Plans prior to the opening to the public of any portion of Phase I of the Project.

(b) The Developer shall submit a written plan for dust control, rodent control, and perimeter fencing to the City Engineer, Building Commissioner and Chiefs of Police and Fire prior to commencement of construction, which plan shall include full access for emergency vehicles.

(c) Unless otherwise approved by the City, at no time during construction of any Phase of the Project shall the Developer allow non-construction, vehicular traffic onto the Project Site or portion thereof which is then under construction. All existing concrete sidewalks and curbing along the Project's Cedar Road, Fenwick Road and Warrensville Center Road that are damaged or removed by the Developer during construction of the Project shall be repaired or replaced, respectively, at the Developer's sole expense.

(d) Upon request by the City, the Developer shall provide the City with proof of comprehensive property, casualty and liability insurance coverage as required in Section 7.7 herein.

(e) Unless otherwise approved by the City, the Developer shall endeavor to cause trash pick-ups and service deliveries to occur between the time period beginning two (2) hours before regular store hours and two (2) hours after regular store hours. All trash shall be stored in covered containers in designated areas only.

(f) The Developer covenants that all storm, water and sanitary sewer systems installed by the Developer and servicing the Project Site or any portion thereof shall be constructed in full compliance with all applicable State and federal environmental health and safety laws.

(g) The Developer agrees to utilize commercially reasonable efforts to practice non-discriminatory hiring in its operations.

(h) The Developer agrees to maintain a proper snow removal plan for the Final Developer Improvements. The Developer agrees to provide adequate racks for bicycle parking in areas at the Project Site approved by the City as shown on the approved Site Plans.

(i) The City shall cooperate with the Developer in holding or causing to be held special meetings in accordance with the City's Charter in furtherance of the intent of this Agreement.

**4.10. Private Improvements Which Are Not Developer Improvements.** Upon the acquisition of any portion of the Project Site pursuant to the Developer's Purchase Option or right of first refusal, the City and the Developer will enter into a Reciprocal Easement Agreement ("REA") which shall provide for, *inter alia*, rights of ingress and egress to the respective portions of the Project Site owned by the City and the Developer and access to utilities located on the Project Site and any necessary easements in connection with such access, and which shall otherwise set forth the rights, obligations, duties, and responsibilities of the City and the Developer and any other owners of any Parcels comprising the Project Site in connection with the development and use of the Private Improvements. The City and the Developer acknowledge and agree that, subject to the Developer's Purchase Option and the right of first refusal, the City may convey any portion of the Project Site for which a Preliminary Site Plan has not been approved, or as to which the Developer does not exercise its Purchase Option or right of first refusal pursuant to Section 1.2 to a User. In such case, the User may submit a Preliminary or Detailed Site Plan in accordance with the provisions of this Agreement or in accordance with other procedures agreed upon between such User and the City, and any Private Improvements

made by such User shall not be “Final Developer Improvements” with respect to this Agreement. In such case, the Developer shall have no obligation with respect to the Private Improvements which are not Final Developer Improvements or which the Developer does not acquire except as an adjacent landowner to the extent applicable. The City will cause any User to enter into the REA or an instrument comparable to the REA which sets forth the rights of the parties. Developer agrees to cooperate with the City and any User to effect the use of any portion of the Project Site by a User consistent with the REA and the public purpose of the City set forth herein.

## ARTICLE V

### **CONTRACT FOR SALE OF PROPERTY; TRANSFER OF PROPERTIES**

**Section 5.1.** (a) Sale of Project Site to Issuer. Upon exercise by the Developer of a Purchase Option or right of first refusal, and subject to and upon the issuance of a series of Bonds, the City shall sell appropriate parcels of the Project Site, together with all improvements thereon, to the Issuer and the Issuer will purchase the appropriate parcels of the Project Site, together with all improvements thereon, from the City for an aggregate amount equal to the Net Proceeds of the Bonds (such aggregate amount being defined as the “Issuer Purchase Price”).

(b) Sale of Land by Port Authority to the Developer. Pursuant to the Cooperative Agreement, and subject to and upon the issuance of the Bonds, the City shall cause the Issuer to sell appropriate parcels of the Project Site, together with any Improvements thereon, to the Developer and the Developer will purchase appropriate parcels of the Project Site and such Improvements from the Issuer for a purchase price (the “Developer Purchase Price”) which is equal to (i) the sum of (A) the Easement Price plus (B) the Fair Market Value determined as provided in Section 1.2(b).

(c) Form of Deed. The City shall convey to the Issuer, and the City shall cause the Issuer to convey to the Developer fee simple title to the applicable portions of the Project Site and the improvements thereon by limited warranty deed (the “Issuer Deed”), free and clear of all liens, security interests, and rights of tenants and parties in possession. The conveyance and title shall, in addition to all other conditions, covenants, and restrictions set forth or referred to elsewhere in this Agreement, be subject to:

(1) The Title Defects approved by the Developer pursuant to Section 2.2;

(2) Unpaid taxes and assessments, not delinquent; and

(3) The City’s ordinances, resolutions, rules, regulations and official policies governing the use of the Project Site, density and intensity of use, maximum height, bulk and size of the proposed buildings, zoning ordinances (collectively “Zoning”) that permit the Project to be developed and operated as contemplated by this Agreement.

(d) Apportionment of Current Taxes. Taxes and assessments, if any, on the portions of the Project Site conveyed to the Developer pursuant to Subsection 5.2(b) shall be prorated between the City and the Developer as of the date of the recording of the Issuer Deed. Real estate taxes and assessments, if any, on the portions of the Project Site for the tax years previous to the tax year in which such City Deed is delivered, will be paid by the City.

(e) Conveyance of Title to Project Site. Simultaneously with the delivery of the Issuer Deed at Closing, the City shall provide, or cause the Issuer to provide, at the Developer’s expense, an owner’s policy of title insurance (“Title Insurance”) issued by Chicago Title Insurance Company (the “Title Company”), with such endorsements as requested by the Developer, insuring to the Developer in the amount of the Issuer Purchase Price for purposes of

evidencing good record title in fee simple, free and clear of all liens, encumbrances, restrictions, reservations, easements and conditions of record except those created by or permitted under this Agreement, including those specifically set forth in subsection 5.2(c) of this Agreement.

(f) Escrow Agent. The parties hereto agree that the Title Company will serve as escrow agent (“Escrow Agent”) for the parties and the Issuer and will assist in the Closing (as described in Section 3.5) pursuant to the terms of this Agreement and mutually satisfactory escrow instructions to be prepared by the City, the Issuer and the Developer prior to Closing of the sale of the Project Site under this Agreement. The Title Company, acting in its capacity as Escrow Agent, shall promptly deposit all funds received pursuant to this Agreement, shall hold such funds in escrow and shall disburse funds in accordance with the escrow instructions and this Agreement, and the Standard Conditions of Escrow Acceptance of the Title Company, to the extent they are not inconsistent with the terms of this Agreement or the escrow instructions, and in accordance with the aforesaid mutually satisfactory escrow instructions. The Developer shall pay the costs of the Title Company, acting in its capacity as escrow agent.

**Section 5.3. No Brokers; Release.**

(a) No Brokers. The City and the Developer each represents that there are and will be no brokerage fees or real estate commissions due and payable as a result of the transfer of all or a portion of the Project Site to Developer as provided herein.

(b) Release. The Developer acknowledges that the City, its officials and agents have made no representations to it regarding the condition of the property conveyed herein; that it is relying exclusively on its investigation; that it is purchasing the property conveyed “AS IS” and “WITH ALL FAULTS” (except with respect to the City’s or its agent’s proper performance of demolition of existing buildings on, and backfilling of and environmental

remediation on the Project Site in accordance with the Letter Agreement); and hereby forever releases the City from liability for or contribution toward any loss, damage, judgment, liability, expense or cost (including but not limited to fines, penalties, court costs, and attorney fees) which the Developer may sustain or become liable for as a result of the condition of the Project Site.

**Section 5.4. Closing.** The parties agree that the real property transfers contemplated in Article V hereof will be filed with the Cuyahoga County Recorder by Escrow Agent on dates agreed to by the City and the Developer, which dates shall be the date of issuance of the series of Bonds if applicable, (the “Closing Date”); provided, however, in no event shall the Closing Date for the Phase I Parcels be later than January 1, 2010.

## **ARTICLE VI**

### **ACQUISITION OF PUBLIC INFRASTRUCTURE EASEMENT**

**Section 6.1 Conveyance of Easement.** On the Closing Date for any Phase, the Developer shall convey to the City an easement (the “Easement”) for a term of fifty-one (51) years in the land on which the Public Infrastructure Improvements are located whereby the City shall have the right to use such land and improvements for public purposes, including, without limitation, public parking, for the term of the Easement. The City shall pay to the Developer the Easement Price, which shall be the present value of the fifty-one year easement on real property, as improved or to be improved by the Public Infrastructure Improvements, on which the parking facilities and other Public Infrastructure Improvements are located, as determined by an independent appraiser engaged by the Issuer.

**Section 6.2. Assignment of Easement.** Upon conveyance by the Developer to the City of the Easement, the City shall assign the Easement (the “Subeasement”) to the Issuer. The Issuer shall pay to the City, from the proceeds of the Bonds, the Easement Price.

## ARTICLE VII

### FINANCING FOR PROJECT

**Section 7.1. Tax Increment Financing.** The Developer and the City will enter into a tax increment financing agreement (“TIF Agreement”) regarding the Project for the purpose of obtaining funds to pay principal of, and interest on the Bonds (collectively, “debt service”) (provided, that the TIF Agreement may be part of the Cooperative Agreement hereinafter described). Subject to the approval of the CH-UH District and passage of the TIF Ordinance, the City agrees that the TIF Agreement shall provide for an exemption for thirty (30) years equal to one hundred percent (100%) of the incremental increase in the assessed value of the Final Developer Improvements over the assessed value of the Project Site as of the date the TIF Ordinance was passed by the City. In the event Service Payments are generated from the Project Site in excess of (i) the amount needed to fund the debt service on any series of Bonds outstanding and all expenses connected therewith, (ii) the amount needed to pay debt service on any general obligation or revenue bonds or bond anticipation notes (“Future City Obligations”) issued by the City to refund the 2009 Notes (and any obligations issued to refund the Future City Obligations or any refunding obligations) after the City’s Minimum Payment, as hereinafter defined, has been applied to payment of the debt service on the Future City Obligations, and (iii) the amount payable to the CH-UH District pursuant to the School Compensation Agreement, such excess shall be used for Public Infrastructure Improvements designated by the City as permitted by the Tax Increment Statutes, the TIF Ordinance, the TIF Agreement and the School Compensation Agreement. As used in this Section 7.1(a), “City’s Minimum Payment” means the amount agreed to in the School Compensation Agreement to be paid by the City for debt service on the Future City Obligations from its own revenues and not from Service Payments.

**Section 7.2. Special Assessments.** On or prior to the date of issuance of any series of Bonds, if deemed necessary in connection with the issuance of the Bonds, the City and the Developer agree to cause to be levied against the Project Site (or any such portion of the parcels in any Phase thereof as may be agreed between the City and the Developer) one or more special assessments (the “Assessments”) for the construction or acquisition of the Public Infrastructure Improvements as may be permitted to be assessed under the Ohio Revised Code, and the City’s Charter and Codified Ordinances and which benefit the Project Site (or such portion thereof as is assessed). The Assessments shall be in an amount equal to the debt service on the applicable series of Bonds and for the same term as such Bonds to the extent permitted by law; provided, however, that the City agrees that it will not certify the amount of annual Assessments to the Cuyahoga County Auditor for collection in any year in which the Service Payments estimated to be collected will be sufficient to pay debt service on the applicable series of Bonds or other monies (other than general revenues of the City or the Issuer) are otherwise available to pay debt service on the Bonds, all as to be more fully described in a cooperative agreement to be entered into among the City, the Issuer, the trustee for the bondholders and the Developer (the “Cooperative Agreement”) in connection with the issuance of the Bonds.

**Section 7.3. City Debt Obligations.**

(a) The City has issued its Taxable Real Estate Acquisition and Urban Redevelopment General Obligation Bond Anticipation Notes, Series 2009A in the principal amount of \$11,550,000 (the “2009A Notes”) and its \$7,000,000 Real Estate Acquisition and Urban Redevelopment General Obligation Bond Anticipation Notes, Series 2009B (the “2009B Notes and, together with the 2009A Notes, the “2009 Notes”) for the acquisition of the Project Site and to

pay interest on the City's Taxable Real Estate Acquisition and Urban Redevelopment General Obligation Bond Anticipation Notes, Series 2008.

(b) Subject to applicable market conditions, the City will agree to refund the 2009 Notes ("the "Refunding GO Notes") in whole or in part until the issuance of one or more series of Bonds as hereinafter described.

(c) The City acknowledges and agrees that to the extent the Issuer Purchase Price is not an amount sufficient to pay in full the principal of and interest on any outstanding Refunding GO Notes, the City will be responsible for the payment of debt service on Future City Obligations in an amount necessary to pay the difference between the outstanding principal balance of any Refunding GO Notes and the Issuer Purchase Price received by the City.

**Section 7.4. Issuer Financing.**

(a) Subject to the requirements of Section 7.8, the City agrees to authorize and issue and/or to use its good faith, diligent and expeditious efforts to cause the issuance by the Issuer of one or more series of Tax Increment Financing Economic Development Revenue Bonds (the "Bonds") for the purpose of financing the costs of the Public Infrastructure Improvements, which costs may include acquiring all or a portion of the Project Site from the City and acquiring the Easement from the Developer and otherwise constructing and improving the permanent Public Infrastructure Improvements as permitted by Ohio law, including, but not limited to, all costs applicable to the permanent improvements as permitted by Sections 133.15 and 5709.40(a), Ohio Revised Code, said Bonds to be issued in anticipation of the collection of the Assessments and Service Payments. The interest on any series of Bonds may be excludable from gross income for federal income tax purposes ("Tax-Exempt Bonds") or the interest on any series of Bonds may

not be excludable from gross income for federal income tax purposes (“Taxable Bonds”) as determined by bond counsel to the Issuer.

**Section 7.5.** The City covenants and agrees to cooperate with the Developer and all other government agencies and parties involved in connection with the issuance of the Bonds.

**Section 7.6.** The City and the Developer agree that the expenses payable by the Developer under Section 8.1 hereof may be paid from Bond proceeds to the extent available and to the extent that such use is consistent with the tax-exempt status of any series of Bonds.

**Section 7.7.** The Developer agrees that it will assume a *pro rata* share (based on acreage) of the City’s obligations under the Brownfield Loan upon acquisition from the City of any parcels pursuant to the Purchase Option provided for herein and that to the extent the repayment of the Brownfield Loan is not forgiven under its terms, and so long as the City has performed its obligations under the Brownfield Loan to the date of the Developer’s assumption thereof, Developer shall be responsible for the *pro rata* payment of such Brownfield Loan, as owner of the *pro rata* share of Project Site (based on acreage).

**Section 7.8. Conditions to Issuance of the Bonds.** Notwithstanding anything to the contrary contained in this Agreement, the City shall have no obligation to issue or cause the Issuer to issue any series of Bonds unless and until the Developer has

(a) signed leases for not less than fifty percent (50%) of the net rentable space in the commercial portions of the Developer Improvements (other than residential space) for the applicable Phase, and

(b) Complied with all requirements contained in Section 1.1 hereof.

**Section 7.9. Mortgagees Not Obligated to Construct.** The Developer shall have the right and authority to obtain mortgage financing for all or any portions of the Developer

Improvements. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land (other than the obligation to make Service Payments and to pay Assessments as provided above), the holder of any mortgage authorized by this Agreement (including any holder who obtains title to the Project or any part thereof as a result of foreclosure proceedings, or action in lieu thereof), but not including (a) any other party who thereafter obtains title to the Project Site or such part from or through such holder or (b) any other purchasers at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to construct or complete the Public Infrastructure Improvements and Final Developer Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Issuer Deed be construed to so obligate such holder; nor shall such mortgagee require consent of the City or the Issuer to enter the portion of the Project Site owned by the Developer. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote all or any portion of 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 in this Agreement.

**Section 7.10. Intercreditor Agreement.** The Developer will use reasonable efforts to assist the Issuer in negotiating an intercreditor agreement with the financial institution(s) providing financing for the Final Developer Improvements. The Developer acknowledges that the City intends for any such intercreditor agreement to address the issues set forth on Exhibit C attached hereto and made a part hereof.

## ARTICLE VII

### PAYMENT OF COSTS

**Section 8.1. Payment of Costs.** Provided the Developer has authorized the expenditure or engagement in advance, the Developer agrees to pay the City for (a) the cost for the issuance of each Series of Bonds relating to a Parcel to be purchased by the Developer incurred by the City, including the fees and expenses of bond counsel, and (b) the fees and expenses of special counsel to the City, Calfee, Halter & Griswold LLP, to the extent the fees of such counsel were for services rendered on or after October 23, 2007 (not to exceed \$150,000). The Developer also agrees to pay the City (i) commercially reasonable fees of the Law Director for the City in reviewing the Bond proceedings and in reviewing plans and specifications, permits and approvals, (ii) the reasonable costs of the services of the City Engineer (not to exceed Ten Thousand Dollars (\$10,000.00) exclusive of the cost of on-site inspection services) with such invoices to be approved by the Developer, (iii) the reasonable costs of obtaining necessary traffic studies not to exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) with invoices to be approved by the Developer, and (iv) clerical fees and fees for outside inspectors engaged by the City in connection with the construction of the Developer Improvements, but in a total amount not to exceed Twenty Five Thousand Dollars (\$25,000.00) with invoices to be approved by the Developer. Such amounts shall be paid for directly by the Developer or shall be added to the Developer Purchase Price, and the City shall have no responsibility for such costs. Such amounts shall be paid irrespective of whether the Bonds are issued and such obligation shall survive the termination of this Agreement. Notwithstanding anything to the contrary in this Section 8.1, the Developer shall be responsible for its *pro rata* share of the fees and expenses identified in subsections (b)(i), (ii), (iii) and (iv) determined on the basis of the total acreage purchased by

Developer compared to the total acreage of the Project Site and the City shall reimburse the Developer, or otherwise cause the Developer to be reimbursed, for a *pro rata* share of any engineering costs and similar costs incurred by Developer in the planning and design of Public Infrastructure Improvements benefiting or serving the entire Project Site, such reimbursement to be determined on same basis.

The Developer shall pay or reimburse the City for all of the City's costs for the purchase and installation of required school crossing signs and flashing light assemblies on streets adjacent to the Project Site in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00). To the extent monies are available from the net proceeds of the Bonds, the City will reimburse the Developer for such payment or reimbursement from the net proceeds of the Bonds.

**Section 8.2. Developer Fees.** In the event that the Developer determines not to exercise its Purchase Option or right of first refusal with respect to any Phase of the Project, but instead is primarily responsible (as reasonably determined by the City) for obtaining a User for that Phase of the Project, the City shall pay Developer a commercially reasonable brokerage fee as mutually determined by the City and the Developer, and shall reimburse the Developer for any direct, out-of-pocket expenses incurred by Developer with respect to such User. The Developer acknowledges that no brokerage fee is due and/or payable with respect to any purchase or lease of a portion of the Project Site by any potential Tenant or User who has contacted the City directly regarding the Project Site on or before January 1, 2009.

## **ARTICLE IX**

### **PUBLIC USE**

**Section 9.1.** The Developer hereby agrees that if it chooses to incorporate a City presence or City services at the Project Site (other than the police substation described in Section

9.2 and other than safety forces), it shall pay to the City a reasonable sum annually, to be negotiated by the parties as appropriate, commencing on the first day the Project is open to the public, or upon other agreement by the parties. The parties may negotiate an upfront payment to the City in anticipation of the reimbursement of such costs. The City shall use such funds exclusively for these City services in the Project Site. This payment may be converted to a single advance payment from the Bond proceeds in an amount to be agreed by the parties.

**Section 9.2.** The Developer shall provide space at no cost to the City within the Project Site for the City's use as a police substation. The terms and conditions (including, without limitation, the size of the space and terms and conditions of the build-out therefor) of such occupancy by the City shall be set forth in a separate agreement between the parties to be negotiated by the parties in good faith.

**Section 9.3.** The Developer agrees to provide any space for use by the CH-UH District as may be required by the School Compensation Agreement.

## **ARTICLE X**

### **TERMINATION**

**Section 10.1. Termination by the City.** The City may terminate this Agreement at any time in the event the Developer fails to meet each of the conditions set forth in Section 1.1 on or before the dates specified therein.

**Section 10.2. Termination by the Developer.** The Developer may terminate this Agreement as provided in Section 1.1. Upon such termination, unless otherwise so provided in Section 1.1, the Developer shall be responsible for the payment of all costs provided for in Section 8.1, unless the City has not approved a Preliminary Site Plan for any Phase, in which

case the Developer shall not be responsible for the applicable *pro rata* share of the costs provided for in in Section 8.1.

**Section 10.2. Termination Not a Breach or Default.** Notwithstanding anything to the contrary contained in this Agreement, a termination by the City pursuant to Section 10.1 or the Developer pursuant to Section 10.2 shall not constitute a breach of this Agreement or the occurrence of an Event of Default or default by the terminating party hereunder.

## ARTICLE XI

### **REMEDIES**

**Section 11.1. In General.** Except as otherwise provided in this Agreement, including Section 10.1 hereof, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, within thirty (30) days after receipt of such notice, or in the event the default or breach does not relate to the payment of money and cannot be cured within thirty (30) days, such longer period of time as may be reasonable. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time after such written notice, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

**Section 11.2. Revesting Title in the City Upon Happening of Event Subsequent to Conveyance to the Developer.** In the event that the Developer shall materially default in or violate its obligations with respect to the construction of the Final Developer Improvements or the Public Infrastructure Improvements, or shall abandon or substantially suspend construction work,

and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within one hundred and eighty (180) days (subject to Force Majeure) after written demand by the City so to do, then the City shall have the right, through judicial process, to foreclose upon and recover the Project Site and revert in the City the estate conveyed to the Developer, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Project Site to the Developer pursuant to the Purchase Option or right of first refusal, shall be made upon, and that the deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the Developer specified in the first sentence of this Section, failure on the part of the Developer to remedy, end, or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such clauses, the City, at its option, may file an action to revert title to the City; provided, that such condition subsequent and any reversion of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage authorized by this Agreement, and (ii) any right or interest provided in this Agreement for the protection of the holders of such mortgage.

**Section 11.3. Other Rights and Remedies: No Waiver by Delay.** The City and the Developer shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Article; provided, that any delay by the City or the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that the City or the Developer should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such

remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City or the Developer with respect to any specific default by the City or the Developer under this Section be considered or treated as a waiver of the rights of the City or the Developer with respect to any other defaults by the City or the Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

**Section 11.4. Costs and Expenses.** Notwithstanding anything to the contrary herein, in the event of any breach or default by the Developer under this Agreement, the Developer shall pay to the City and shall indemnify and hold harmless the City from and against any loss, cost, damage, or expenses incurred by the City in enforcing the obligations of the Developer under this Agreement.

## ARTICLE XII

### **DEFINITIONS**

**Section 12.1. Use of Defined Terms.** In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 12.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

**Section 12.2. Definitions.** As used herein:

“2009 Notes” means the Real Estate Acquisition and Urban Redevelopment General Obligation Bond Anticipation Notes, Series 2009A and Series 2009B that the City issued on January 26, 2009.

“Agreement” means this Amended and Restated Project Development Agreement and contract for Sale of Land, as amended or supplemented from time to time.

“Assessments” has the meaning set forth in Section 7.2.

“Bonds” means the one or more series of Tax Increment Financing Economic Development Revenue Bonds to be issued by the Issuer pursuant to Section 7.4.

“Brownfield Loan” has the meaning set forth in Section 2.1.

“CH-UH District” means the Cleveland Heights-University Heights City School District.

“Certificate of Occupancy” has the meaning set forth in Section 4.8.

“City” means the City of South Euclid, Ohio, a municipal corporation organized and existing under the Constitution and Laws of the State of Ohio.

“City’s Minimum Payment” means the amount agreed to in the School Compensation Agreement to be paid by the City for debt service on the Future City Obligations from its own revenues and not from Service Payments.

“Closing Date” means the date of issuance of the Bonds and the purchase of the Project Site by the Issuer from the City.

“Commencement Date” has the meaning set forth in Section 4.1.

“Cooperative Agreement” means the cooperative agreement to be entered into among the City, the Issuer, the trustee for the bondholders and the Developer in connection with the issuance of the Bonds.

“County” means Cuyahoga County, Ohio.

“Deposit” has the meaning set forth in Section 1.1(b)(ii).

“Detailed Site Plan” has the meaning set forth in Section 3.2.

“Developer” means Coral SECC, LLC, an Ohio limited liability company.

“Developer Purchase Price” has the meaning set forth in Section 5.1(b).

“Easement” means the easement conveyed to the City as described under Section 6.1.

“Easement Price” has the meaning set forth in Section 6.1.

“Effective Date” means the last date of execution and delivery of the Agreement by the City and the Developer.

“Escrow Agent” means the Title Company.

“Fair Market Value” has the meaning set forth in Exhibit D.

“FMV Negotiation Period” has the meaning set forth in Section 1.2(a).

“Final Developer Improvements” means the Private Improvements owned by the Developer as finalized and approved pursuant to Section 3.2(a)(ii).

“Force Majeure” has the meaning set forth in Section 4.3.

“Future City Obligations” means any general obligation bonds or revenue bonds of the City issued to refund the 2009 Notes or any Refunding GO Notes, and any obligations issued to refund the Future City Obligations or any refunding obligations.

“Improvements” means the Public Infrastructure Improvements and the Private Improvements.

“Insurance Requirements” means all policies of insurance as described in Section 4..

“Issuer” means the Cleveland-Cuyahoga Port Authority or Cuyahoga County, as issuer of the Bonds.

“Issuer Deed” has the meaning set forth in Section 5.1(c).

“Issuer Purchaser Price” has the meaning set forth in Section 5.1(a).

“Letter Agreement” has the meaning set forth in Section 2.1.

“Master Lease” means the master lease of residential facilities to be entered into by the Developer with a Master Lessee.

“Master Lessee” means one or more institutional users leasing the residential facilities from the Developer pursuant to a Master Lease.

“Permits” means the documents necessary for commencement of construction of the Developer Improvements issued by the City.

“Phase” means the development of a portion of the Project independent of the development of any other portion of the Project.

“Phase I Parcels” has the meaning set forth in Section 1.1(a).

“Phase II Parcels” has the meaning set forth in Section 1.1(a).

“Phase III Parcels” has the meaning set forth in Section 1.1(a).

“Phase IV Parcels” has the meaning set forth in Section 1.1(a)

“Phase I Site Plan” has the meaning set forth in Section 1.1(b)(ii).

“Private Improvements” means the retail, hotel, restaurant, medical office, office, health care, educational, governmental, and residential improvements constructed and to be owned or operated by the Developer or a User, and includes the Final Development Improvements.

“Project Site” means the property currently known as the Cedar Center Shopping District, which properties are depicted on Exhibit A attached to the Agreement and identified by the tax parcel numbers set forth on Exhibit B attached to the Agreement.

“Proposed Construction Drawings” means the complete engineering and architectural plans submitted by the Developer to the City for the construction of the Developer Improvements as set forth in Section 3.2(a)(ii).

“Public Infrastructure Improvements” means the public infrastructure improvements set forth in the Detailed Site Plan for any Phase which shall be “public infrastructure improvements” as defined in Section 5709.40(A)(7), Ohio Revised Code and shall include, but not be limited to, public parks, streets, water and sewer facilities, sidewalks, streetscapes, lighting and public surface parking.

“Purchase Option” means the sole and exclusive right and option to purchase any parcels comprising the Project site for which a Site Plan has been approved.

“Refunding GO Notes” means any outstanding general obligation bond anticipation notes issue to refund the 2009 Notes.

“School Compensation Agreement” means the Agreement among the City, the Developer and the Cleveland Heights-University Heights City School District.

“Service Payments” has the meaning set forth in Section 5709.42, Ohio Revised Code.

“State” means the State of Ohio.

“Subeasement” has the meaning set forth in Section 6.2.

“TIF Agreement” means the tax increment financing agreement to be entered into between the Developer and the City.

“TIF Ordinance” means the ordinance or ordinances to be enacted to declare the Developer Improvements to the Project Site to be a “public purpose” as provided in the Tax Increment Statutes.

“Tax-Exempt Bonds” means Bonds in which interest is excludable from gross income for federal income tax purposes.

“Tax Increment Statutes” means Section 5709.40 et seq. of the Ohio Revised Code.

“Taxable Bonds” means Bonds in which interest is not be excludable from gross income for federal income tax purposes.

“Title Commitment” has the meaning set forth in Section 2.2(a).

“Title Company” means the Chicago Title Insurance Company.

“Title Defects” has the meaning set forth in Section 2.2(a).

“Title Insurance” has the meaning set forth in Section 5.1(e).

“Users” means any buyers, retailers or occupants of any portion of the Project Site.

“Zoning” means collectively the City’s ordinances, resolutions, rules, regulations and official policies governing the use of the Project Site, density and intensity of use, maximum height, bulk and size of the proposed buildings and zoning ordinances.

### ARTICLE XIII

#### MISCELLANEOUS

**Section 13.1. Conflict of Interest: the City’s Representatives not Individually Liable.** No member, official or employee of the City 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 City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

**Section 13.2. Provisions Not Merged With Deed.** No provision of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Project Site from the

City to the Issuer, from the Issuer to the Developer, from the Developer to the City or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**Section 13.3. Invalidity of Particular Provisions.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**Section 13.4. Applicable Law and Construction.** The laws of the State of Ohio shall govern the validity, performance and enforcement of this Agreement. The headings of the several Articles and Sections contained herein are for convenience only and do not define, limit or construe the contents of such Articles or Sections. Except as expressly provided otherwise, whenever the City's or the Developer's permission, consent, approval, cooperation, or other act or omission is required pursuant to the terms of this Agreement, such act or omission shall not be unreasonably withheld, conditioned or delayed.

**Section 13.5. Notice.** All notices or other communications required to be given hereunder shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or if delivered to a nationally recognized overnight courier service; or, if mailed by U.S. registered or certified mail, Postage Prepaid; and, addressed as follows:

(a) NOTICE TO CITY:

City of South Euclid  
Attention: Mayor  
1349 South Green Road  
South Euclid, Ohio 44121

with a copy to:

Michael P. Lograsso  
Law Director  
City of South Euclid  
1414 South Green Road, #310  
South Euclid, Ohio 44121

(b) NOTICE TO DEVELOPER:

Coral SECC, LLC  
13990 Cedar Road  
Cleveland, Ohio 44118  
Attention: Peter L. Rubin, President

with a copy to:

Gary S. Desberg, Esq.  
Singerman, Mills, Desberg & Kauntz Co., L.P.A.  
3401 Enterprise Parkway  
Suite 200  
Beachwood, Ohio 44122

Each of the foregoing may change its notice address if it so notifies the other parties listed above pursuant to this Section.

**Section 13.6. No Recordation of Agreement.** Neither party shall record this Agreement, whether in the public records of Cuyahoga County or elsewhere; provided, that the City or the Issuer may record a declaration of restrictive covenants setting forth the Developer's obligations under this Agreement.

**Section 13.7. Construction of Terms.** Whenever the singular or plural number or masculine, feminine or neuter gender is used herein, it shall equally include the other, and the terms and provisions of this Agreement shall be construed accordingly.

**Section 13.8. Agreement Binding Upon Successors.** The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit not only of the parties hereto, but their respective personal representatives, heirs (if applicable), successors and assigns.

**Section 13.9. Authority.** Each of the parties represents and warrants to the other that the parties signing this Agreement have been duly authorized and empowered to sign on behalf of the parties.

**Section 13.10. Survival.** The provisions of this Agreement shall survive any expiration or earlier termination of the Agreement to the extent necessary to carry out the intent and expectations of the parties.

**Section 13.11. Complete Agreement; Amendment.** All negotiations, considerations, representations and understandings between the parties as to the Project are incorporated herein, and may be modified or altered only by agreement in writing signed by both parties to this Agreement.

**Section 13.12. Non-Waiver.** Failure of the City or the Developer to complain of any act or omission on the part of the other party, however long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by the City or the Developer at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

**Section 13.13. No Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third party beneficiary.

**Section 13.14. Time is of the Essence.** Time is of the essence in this Agreement.

**Section 13.15. Exhibits.** All Exhibits attached hereto are incorporated herein as if fully rewritten herein.

**Section 13.16. Approvals by the City.** Any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction of the City, certificate or certification by the City or the opinion of the City shall be interpreted as requiring action by the Mayor of the City (or such other official as the Mayor of the City may from time to time designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision or the administrative procedures applicable in the City expressly provides otherwise.

**Section 13.17. City Council.** This Agreement and all terms and provisions herein are subject to and conditioned upon the approval or ratification by duly enacted ordinance or resolution of City Council of the City of South Euclid.

**Section 13.18. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.

**Section 13.19. Agreement Runs with the Land.** All of the provisions, rights, terms covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees and all other persons acquiring the Project Site, or any portion thereof, or any interest therein, whether by operation of law or in any matter whatsoever.

**Section 13.20. Recitals.** The Recitals set forth at the beginning of this Agreement are incorporated in this Agreement as if fully rewritten herein.

*(signatures on following page)*

IN WITNESS WHEREOF, the CITY OF SOUTH EUCLID, OHIO has caused this Agreement to be duly executed in its behalf; and the Developer has caused the same to be duly executed in its behalf, on or as of the day and year first above written.

CITY OF SOUTH EUCLID, OHIO

By: \_\_\_\_\_  
Mayor Georgine Welo

Dated: \_\_\_\_\_, 2009

Approved as to Form:

\_\_\_\_\_  
Director of Law, City of South Euclid

CORAL SECC, LLC

By: \_\_\_\_\_  
Peter L. Rubin, President

Dated: \_\_\_\_\_, 2009

**CERTIFICATE OF DIRECTOR OF FINANCE**

The undersigned fiscal officer of the City hereby certifies that the moneys required to meet the obligations of the City during the year 2009 under this Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

\_\_\_\_\_  
Director of Finance

## LIST OF EXHIBITS

Exhibit A - Site Plan of Project Site

Exhibit B - Tax Parcel Numbers of Land Comprising Project Site

Exhibit C - Intercreditor Agreement Issues

Exhibit D - Purchase Option

Exhibit E - Alternate Bidding Procedures

Exhibit F - Form of Construction Agency Agreement

## EXHIBIT C

The following is an outline of certain primary elements that the City will require as a part of an acceptable Intercreditor Agreement:

- 1) acknowledgment of sources to and flow of funds from the project;
- 2) division of property/project into separate sources of acceptable security;
- 3) recitation and agreement as to priority of security interests in such security sources;
- 4) acknowledgment right of each lender to receive and retain scheduled payments in absence of defaults;
- 5) mandatory notice among lender/finance source group on defaults;
- 6) standstill periods for cooperative cures after default before any lender exercises remedies;
- 7) agreements as to all parties' obligations to preserve collateral;
- 8) right and ability for lenders to replace Developer after default to complete project;
- 9) rights of each of the various lender/financial sources to exercise remedies upon default, after standstill period, to preserve and protect security interests in absence of agreement to contrary; and
- 10) agreement of each lender not to modify documents, increase debt or extend repayment periods without notice and consent of other lender parties.

## **EXHIBIT D**

### **Option Procedure**

The following procedures shall govern the sale of the Premises by City to Developer in the event Developer exercises its Purchase Option as set forth in Section \_\_\_ of the Amended and Restated Development Agreement and Contract for the Sale of Land (the “Agreement”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

1. **Purchase Price.** The Purchase Price shall be determined as set forth in Section 1.2(a) of the Agreement and in this Exhibit D.
2. **Title Commitment, Survey and Title Review.** Upon exercising its Purchase Option, the Developer shall comply with the provisions of Section 2.2 of the Agreement.
3. **Transfer Documents and Title Policy.** City shall provide a deed in accordance with Sections 5.1(c) and 5.1(e) of the Agreement.
4. **Closing.** The date the Closing occurs in accordance with this Exhibit D is referred to herein as the “Closing Date” and the Closing Date shall be determined as provided in Section 5.4 of the Agreement.
5. **Costs.** Costs shall be apportioned as provided in the Agreement.
6. **Possession.** City shall deliver full and complete possession of the parcels comprising the Project Site to Developer on the Closing. Time for delivery of possession herein specified is of the essence.
7. **Survival of Provisions.** All warranties, representations and covenants set forth in, or made pursuant to, these instructions and the Agreement shall survive the Closing.
8. **Binding Effect.** Upon exercise of the option by Developer, these instructions shall become an agreement for the sale of the parcels comprising the Project Site, binding upon and accruing to the benefit of Developer and City and their respective heirs, legatees, representatives, administrators, successors and assigns and may not be modified except by a subsequent agreement in writing executed by both Developer and City.
9. **Definition of Fair Market Value.** The “Fair Market Value” with respect to the Project Site or any Parcels comprising a portion thereof shall mean the then prevailing fair market value, as determined by City and Developer in good faith, in comparable fact situations. In determining the Fair Market Value, the income approach to valuation analysis shall be used.
10. **Fair Market Value Determination.** If City and Developer are unable to agree upon the Fair Market Value for the Premises, City and Developer agree that the Fair Market Value shall be determined by a board of two appraisers (each an “Appraiser”), one of whom shall be named by City and one of whom shall be named by Developer. City shall pay the cost of the Appraiser

named by City and Developer shall pay the cost of the Appraiser named by Developer. Each of the Appraisers shall be licensed in the State of Ohio as a real estate appraiser, be a member of the Appraisal Institute, specializing in the field of commercial real estate in the Cleveland, Ohio metropolitan area, having not less than ten (10) years experience in such field, be recognized as ethical and reputable within the field be unrelated to and unaffiliated with either the City or the Developer. City and Developer agree to make their appointments promptly within fifteen (15) days after the expiration of the FMV Negotiation Period, or sooner if mutually agreed upon. Within forty-five (45) days after the expiration of the FMV Negotiation Period, City's Appraiser and Developer's Appraiser shall submit his or her determination of the Fair Market Values for the Premises, determined using the income approach to valuation analysis, to the other. If the determinations by the Appraisers differ by less than ten percent (10%) of the highest appraisal, then the decision will be deemed to be the average of the two determinations. If the preceding sentence does not apply, then City's Appraiser and Developer's Appraiser shall select a Third Appraiser within fifteen (15) days after the expiration of the FMV Negotiation Period. Within ten (10) days after the Third Appraiser is selected, City's Appraiser and Developer's Appraiser shall submit their determinations to the Third Appraiser in order for the Third Appraiser to select either Developer's or City's Appraisers' determination as closest to the Fair Market Value using the income approach to valuation analysis. The Third Appraiser shall make such selection within fifteen (15) days after receipt of City's Appraiser's and Developer's Appraiser's determinations. The parties shall each pay fifty (50%) of any cost of the Third Appraiser. The Third Appraiser shall be engaged on the specific basis of non-liability to the parties for any determination made by him or her, and such engagement shall be with the appropriate and necessary waivers and Agreements so as to confirm such non-liability to his or her satisfaction. Purchase and sale of the Premises shall take place according to the procedure set forth in Sections 1.2 and 5.1 of the Agreement and in this Exhibit D.

11. Termination of Option. The Purchase Option and any agreement created hereby shall terminate and be of no further force and effect immediately upon termination or expiration of the Agreement.

**EXHIBIT E**

**Alternate Bidding Procedures**

**EXHIBIT F**

**Form of Construction Agency Agreement**