

**REDEVELOPMENT**

**AGREEMENT**

**FOR**

**THE ACQUISITION OF LAND FOR REDEVELOPMENT AND SITE REMEDIATION  
IN THE MILLTOWN-FORD AVENUE REDEVELOPMENT AREA  
BOROUGH OF MILLTOWN, MIDDLESEX COUNTY, NEW JERSEY**

**BETWEEN**

**THE MILLTOWN-FORD AVENUE REDEVELOPMENT AGENCY**

**AND**

**BORAIE DEVELOPMENT, L.L.C.,  
A Limited Liability Company Created and Operating under the Laws of the  
State of New Jersey**

**AND**

**WSH, LLC, As Guarantor**

**DATED: May 11<sup>th</sup>, 2004**

This REDEVELOPMENT AGREEMENT ("Agreement") made as of this 11<sup>th</sup> day of May, 2004, by and between

THE MILLTOWN-FORD AVENUE REDEVELOPMENT AGENCY, a body corporate and politic of the State of New Jersey having its offices at 39 Washington Avenue, Milltown, New Jersey 08850 (hereinafter referred to as the "Agency");

and

BORAIE DEVELOPMENT, LLC, a limited liability company created and operating under the laws of the State of New Jersey, having its offices at 120 Albany Street, New Brunswick, New Jersey 08901 (hereinafter referred to as "Developer");

W I T N E S S E T H:

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

**WHEREAS**, pursuant to the Redevelopment Law, the governing body of the Borough of Milltown (hereinafter referred to as the "Borough") has designated an area fronting on the southerly side of Ford Avenue, between Main Street and Brook Drive, and contiguous with the Mill Pond and Lawrence Brook to the south and west, respectively (hereinafter referred to as the "Redevelopment Area") as an area in need of redevelopment; and

**WHEREAS**, the Borough has adopted a Redevelopment Plan dated March 12, 2002, for the Redevelopment Area (hereinafter referred to as the "Redevelopment Plan"), which Redevelopment Plan sets forth the Borough's plan for revitalizing and improving the Redevelopment Area; and

**WHEREAS**, in order to assist the Borough in carrying out redevelopment and improvement of the Redevelopment Area and other areas in need of redevelopment, the Borough created the Agency to implement the Redevelopment Plan; and

**WHEREAS**, the Redevelopment Area consists of Lots 1.01, 1.02, 1.03, and 1.07 in Block 58, as shown on the official tax map of the Borough (hereinafter referred to as the "Project Site"), being more particularly described on **Exhibits A and A-1** annexed hereto; and

**WHEREAS,** Developer proposes to develop the Project Site with a mixed use project consisting of up to 324 units of age restricted senior housing, up to 75,000 square feet of commercial office/retail space, which may include a health clinic, surface parking and associated landscaping, and other public open space, all in accordance with the relevant provisions of the Redevelopment Plan, as may be amended (hereinafter the "Project," which Project is more particularly described in Section 1.1 of this Agreement); and

**WHEREAS,** the Agency has reviewed Developer's proposal and has approved Developer to be the designated developer of the Project Site; and

**WHEREAS,** Developer will use its best efforts to acquire the Project Site by private negotiation (all parcels to be acquired by Developer being referred to, collectively, as the "Developer Parcels"); and

**WHEREAS,** the Agency will acquire those parcels within the Project Site that Developer is unable to acquire (the "Agency Parcels") and will convey the Agency Parcels to Developer; and

**WHEREAS,** Developer will finance the Project costs, estimated at approximately \$60,000,000, through loans from banking institutions and Developer equity; and

**WHEREAS,** environmental site and remediation investigations will be assessed by Developer in cooperation with the Agency and the Middlesex County Improvement Agency (hereinafter the "MCIA"), using a \$350,000 environmental grant ("Grant Funds") from the U. S. Environmental Protection Agency ("USEPA"), and any additional funds which may be made available to be administered under the "Triad" site remediation system by the MCIA in cooperation with the New Jersey Department of Environmental Protection ("NJDEP"); and

**WHEREAS,** the parties desire to enter into this Agreement for the purpose of setting forth their respective undertakings, rights and obligations in connection with the acquisition, environmental investigation and remediation, other preliminary work and studies, and construction and financing with respect to the Project.

**NOW, THEREFORE,** in consideration of the promises and mutual covenants herein contained, and for other good and valuable consideration, the parties hereto do hereby covenant and agree each with the other as follows:

## DEFINITIONS

When used in this Agreement, the following words, phrases or terms shall have the following meanings:

**"Agency"** shall mean the Milltown-Ford Avenue Redevelopment Agency, a body corporate and politic of the State of New Jersey having offices at 89 Washington Avenue, Milltown, New Jersey 08850.

**"Agency Parcels"** shall mean those parcels of the Project Site that are acquired by the Agency.

**"Affiliated Entity"** shall mean a limited liability company or other entity created by Developer to carry out the Project, whose principals are the same as Developer's principals.

**"Agreement"** shall mean this Redevelopment Agreement dated May 11, 2004 by and between The Milltown-Ford Redevelopment Agency and Boraie Development, LLC.

**"Approvals"** shall mean all governmental approvals, permits, licenses, agreements and capacity reservations from any governmental Agency having jurisdiction over the Redevelopment Area that are required to permit construction of the Project to commence including, but not limited to, local and county planning approvals, construction permits and other various state and local approvals excluding, however, approvals, permits and the like normally obtained in the ordinary course during construction.

**"Borough"** shall mean the Borough of Milltown, County of Middlesex, and State of New Jersey.

**"Concept Plan"** shall have the meaning set forth in Exhibit B to this Agreement.

**"Contamination"** shall mean any discharge, dispersal, dumping, release, emission, escape, leak or spill of Hazardous Substances on, into, under or from the Redevelopment Area in violation of Environmental Laws.

**"Developer"** shall mean Boraie Development, LLC, a limited liability company created and operating under the laws of the State of New Jersey, having its offices at 120 Albany Street, New Brunswick, New Jersey 08850.

**"Developer Parcels"** shall mean those parcels within the Project Site that are acquired by the Developer.

**"Development Period"** shall mean the period commencing from the end of the Pre-Development Period and continuing for a period of thirty-six (36) months thereafter, which period may be extended up to twelve (12) months upon consent by the Agency.

**"Effective Date"** shall have the meaning set forth in Article 24 of this Agreement.

**"Environmental Approvals"** shall mean any Environmental Approval required under Environmental Laws.

**"Environmental Laws"** shall mean any federal, state, local, municipal or other statutes, laws, ordinances, rules, regulations or other legally enforceable requirement whether presently existing or hereinafter enacted, promulgated or otherwise created for the protection of the environment or human health from hazardous substances, as the same may be amended or supplemented from time to time, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11 et seq.; (b) the New Jersey Industrial Site Recovery Act, as amended N.J.S.A. 13:1K-6 et seq.; (c) the New Jersey Leaking Underground Storage Tank Act, as amended, N.J.S.A. 58:10-21 et seq.; (d) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 U.S.C. §§ 9601 et seq.; (e) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; (f) the Hazardous Material Transportation Act, as amended, 49 U.S.C. §§ 180 et seq.; (g) the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.

**"Estimated Environmental Costs"** shall mean the estimated cost of Remediation of Contamination in accordance with Environmental Laws.

**"Grant Funds"** shall mean the \$350,000.00 environmental grant received from the USEPA to conduct an environmental site investigation and any additional funds made available through grant funds.

**"Hazardous Substances"** shall mean any and all elements, compounds, substances, materials, or waste, whether solid, liquid or gaseous, which are either defined or referred to as hazardous or toxic, or as pollution or a pollutant, or contaminant under Environmental Laws, excluding, however, customary construction, maintenance, janitorial and cleaning supplies in reasonable quantities to be used in the ordinary

course of construction and operation of the Project and which are used and disposed of in accordance with all applicable Environmental Laws.

**"Indemnification"** shall have the meaning set forth in Section 7.8 of this Agreement.

**"MCIA"** shall mean the Middlesex County Improvement Agency.

**"Natural Resource Damage Claims"** shall mean damages assessed by either the NJDEP or State of New Jersey as a result of contamination either at the Project Site or coming from the Project Site to off-site properties.

**"NJDEP"** shall mean the New Jersey Department of Environmental Protection.

**"New Jersey Environmental Infrastructure Financing Program"** shall mean a program of providing financing assistance to the Agency for its use to acquire land for the Project.

**"Phasing Schedule and/or Project Timeline"** shall mean the schedule provided by the Developer to the Agency for construction of the Project, which Phasing Schedule and/or Project Timeline is attached hereto as **Exhibit C**.

**"Preliminary Assessment" or "Preliminary Environmental Assessment"** shall have the meaning as set forth in NJDEP's Technical Regulations for Site Remediation, N.J.A.C. 26E-3.1 et seq.

**"Pre-Development Period"** shall mean the period commencing from the date of execution of this Agreement and continuing for a period of either twelve (12) months or until the NJDEP approves the Remedial Action Work Plan, whichever is earlier.

**"Project"** shall have the meaning set forth in Section 1.1 of this Agreement.

**"Project Site" or "Redevelopment Area"** shall mean the area as described in **Exhibits A and A-1** to this Agreement that has been designated as an area in need of redevelopment in accordance with the Redevelopment Law.

**"Redevelopment"** shall mean the design and construction of the improvements on the Project Site as contemplated by this Agreement.

**"Redevelopment Law"** shall mean the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

**"Redevelopment Plan"** shall mean the Milltown-Ford Avenue Redevelopment Plan adopted by the Borough pursuant to the Redevelopment Law, as may be amended.

**"Remedial Action Work Plan"** shall have the meaning as set forth in NJDEP's Technical Regulations for Site Remediation, N.J.A.C. 26E-6.2.

**"Remediation"** shall mean any clean up, containment, correction or adjustment in accordance with Environmental Laws to any environmental Contamination or environmental damage to any natural resource including, but not limited to, air, groundwater, surface water or soil.

**"Remediation cost"** shall mean any cost incurred for Remediation of the Redevelopment Area.

**"Site Investigation"** shall have the meaning as set forth in NJDEP's Technical Regulations for Site Remediation, N.J.A.C. 7:26E-3.3 et seq.

**"Triad" or "Triad Team"** shall mean the administration of USEPA Grant Funds for Redevelopment Area Remediation by MCIA in cooperation with NJDEP.

**"USEPA"** shall mean the United States Environmental Protection Agency.

## **ARTICLE 1 - PROJECT**

1.1. Description of Project. The Project will consist of (a) up to 75,000 square feet of commercial office/retail space, which may include a health clinic with associated parking spaces as proposed by Developer and accepted by Agency; (b) age restricted senior owner-occupied housing consisting of single family homes, townhouses and multi-level units in a residential mix proposed by Developer and accepted by Agency, the total of which will be approximately 224 units with associated parking in conformance with the Redevelopment Plan, and a clubhouse; (c) an age restricted apartment building consisting of not less than 80 units and not more than 100 units, of which not more than twenty-five percent (25%) of the units will be two bedroom units; and (d) public open space, including landscaping, planted areas and pedestrian walks as proposed by Developer and accepted by Agency. In no event shall the total number of all

residential units, including the age-restricted apartment building, exceed 324. The Project shall be designed in substantially the form described in the Concept Plan attached hereto as **Exhibit B**.

1.2. Developer's Responsibility to Carry Out the Project. Developer shall be responsible for carrying out all aspects of the Project, including acquisition of the Project Site, which acquisition as to Agency Parcels shall be in conjunction with the Agency obtaining all necessary governmental approvals, preparing the Project Site, and constructing the Project improvements, all as more fully set forth in this Agreement.

1.3. Status Reports and Compliance with Project Schedule. During the Development Period, Developer shall report to the Agency in writing concerning the status of the matters set forth in this Agreement. Developer shall submit monthly status reports in such detail as may be reasonably requested by the Agency. Each monthly report shall be received by the Agency at least one week before the Agency's regular meeting. Developer shall use its best efforts to comply with the Project Timeline and/or Phasing Schedule set forth in **Exhibit C** hereof.

## **ARTICLE 2 - PREDEVELOPMENT PERIOD**

2.1. Developer's Obligations During the Pre-Development Period. During the Pre-Development Period, Developer shall exercise its best efforts to negotiate purchase contracts with all of the owners of the Developer Parcels. In addition to attempting to acquire the Project Site, Developer shall have the following obligations during the Pre-Development Period:

a. Developer shall provide the Agency with a traffic study addressing, among other things, the need for a signal at the intersection of Main Street and Ford Avenues, and any other intersections impacted by the development of the Site, and associated traffic impacts of the Project.

b. Within six months after execution of this Agreement, Developer shall provide the Agency with a utility study addressing the need to update existing sewer, water, and electric service, and storm water management as to the Project Site.

c. Within six months after execution of this Agreement, Developer shall obtain and provide to the Agency



title searches, surveys, and a wetlands delineation of the Project Site.

d. Developer shall provide the Agency with a Construction Phasing Schedule for construction of the Project, including a demolition and traffic control plan, a plan for the safe removal of debris from the Site and a plan for security on the Project Site during demolition and construction.

e. Developer shall provide a plan as to how the residential portion of the Project will meet a portion of the Borough's affordable housing obligation.

f. Developer shall assist the Agency in preparing a Stage 1A Cultural Resource Survey of the entire Project area in accordance with N.J.A.C. 7:22-10.8, and with report guidelines issued by the New Jersey Historic Preservation Office (see attached letter from NJDEP dated February 5, 2004, attached hereto as **Exhibit D**).

g. Developer shall prepare its application for site plan approval and, to the extent possible, all other governmental approvals, in order to avoid unnecessary delays in submitting these applications after obtaining control of the Project Site.

2.2. Access to the Project Site. To the extent that Developer requires access to any of the Developer Parcels or permission from the current owner(s) in order carry out the obligations set forth in Section 2.1 and Article 5 of this Agreement, the Agency will take all necessary steps to obtain necessary access or other permissions pursuant to the Eminent Domain Law, N.J.S.A. 20:3-16 and the Redevelopment Law, N.J.S.A. 40A:12A-8.h. The Agency hereby authorizes Developer to act as its agent for the purpose of carrying out the work described in Section 2.1 and Article 5. Developer shall acquire liability and property damage insurance in an amount satisfactory to the Agency and agrees to indemnify and hold harmless the Agency from any and all claims which may be presented by third-parties in connection with Developer, it's employees, agents, contractors or workers, relating to any preliminary investigation performed by them on the Project Site.

2.3. New Jersey Environmental Infrastructure Financing Program. The Agency shall cooperate with the Developer in filing an application to the NJDEP for financial assistance from the New Jersey Environmental Infrastructure Financing Program for land purchase. Developer shall assist the Agency in such filing. Developer shall meet all of the Assurances as set forth

in **Exhibit E** hereof. Developer shall indemnify and hold harmless Agency for any costs or obligations incurred by Agency. The scope of this indemnification shall be the same as set forth in Section 7.8 of this Agreement.

2.4. Status Reports and Compliance with Project Schedule. During the Pre-Development Period, Developer shall report to the Agency, in writing, concerning the status of the matters set forth in this Agreement. Developer shall submit monthly status reports in such detail as may be reasonably requested by the Agency. Each monthly report shall be received by the Agency at least one week before the Agency's regular meeting. Developer shall use its best efforts to comply with the Project Timeline and/or Phasing Schedule as set forth in **Exhibit C** hereof.

### **ARTICLE 3 - ACQUISITION BY THE AGENCY**

3.1. Condemnation Notice. If, at any time during the Pre-Development period, Developer advises the Agency that it cannot obtain a contract to purchase any of the Development Parcels (the "Condemnation Notice"), the Agency shall commence proceedings to acquire said parcels by eminent domain. If, by the end of ninety (90) days after the end of the Pre-Development period, the Developer has either not acquired or entered into a contract to acquire with any of the property owners owning property in the Project Site, Developer must give the Condemnation Notice to the Agency to acquire the property(ies) it has not acquired. If such Condemnation Notice is not given, the Agency can terminate this Agreement pursuant to Article 11 hereof after giving notice pursuant to Article 11.1 hereof.

3.2. Pre-Condemnation Environmental Assessment. After receipt of the Condemnation Notice, the Agency shall conduct preliminary investigations and appraisals of the Agency Parcels pursuant to N.J.S.A. 20:3-16 (the "Pre-Condemnation Environmental Assessment") to the extent necessary, as the Agency shall first utilize the environmental information provided pursuant to the triad site remediation investigation as supplemented by the environmental information provided by the Developer. The Agency will make offers to the owners of the Agency Parcels, and enter into good faith negotiations with the owners. The cost of any preliminary investigations and negotiations including, but not limited to, appraisal fees and legal fees, shall be considered Agency Costs, as set forth in Section 3.9, and shall be paid or reimbursed by Developer from the Escrow Funds, as hereinafter defined. The Agency may delegate its responsibility to conduct the Pre-Condemnation Environmental Assessments to Developer and shall take all

necessary actions to obtain access to the Project Site for purposes of Developer's investigation. Developer shall coordinate its investigative efforts with the Agency and the MCIA, as set forth in Article 5 of this Agreement.

3.3. Environmental Cost Recovery. Any condemnation Complaint shall include appropriate reservations of rights with respect to the Agency's recovery of environmental costs. After consultation with Developer, the Agency shall institute any action for environmental cost recovery that the Agency shall deem necessary and appropriate.

3.4. Deposits into Court. At Developer's written request and after payment by Developer of Agency Costs, including the purchase price of any property as set forth in Paragraph 3.9 hereof, the Agency shall commence condemnation proceedings, but not until the Agency has determined a reasonable estimate of environmental costs (the "Estimated Environmental Costs"). In no event shall the Agency file and record a declaration of taking as to any contaminated parcel without Developer's consent. Simultaneously with the filing of a declaration of taking, the Agency shall deposit into court the estimated fair market value of the property, as if remediated. Upon motion of any condemnee to withdraw the funds on deposit, the Agency shall object to the withdrawal of an amount equal to the Estimated Environmental Costs and shall request an order allowing the court to hold the Estimated Environmental Costs in trust as potential cost recovery damages.

3.5. Appraisals and Other Reports. The Agency shall provide Developer with copies of all appraisals, surveys, title reports, environmental reports or other investigative reports obtained by the Agency with respect to the Agency Parcels.

3.6. Quality of Title. The Agency shall acquire fee simple absolute title to the Agency Parcels, which title shall be good and marketable and insurable at regular rates and without special premium by a reputable title insurance company doing business in the State of New Jersey, subject only to such title exceptions as Developer may approve. The Agency shall promptly file and record in the Office of the Clerk of Middlesex County the deeds to the Agency Parcels if acquired by purchase agreement and a declaration of taking if acquired by condemnation proceedings.

3.7. Agency's Legal Counsel. With respect to any condemnation proceedings instituted by the Agency and with respect to any other legal work required by the Agency relating to the Project, the Agency may appoint an attorney or attorneys

to act as special counsel to conduct said condemnation proceedings and to perform such other work for the Agency. In addition, the Agency shall have the right to hire appraisers, surveyors and such other professionals as may reasonably be required in connection with such condemnation proceedings, all of which will be considered Agency Costs. The selection of professionals shall be at the Agency's reasonable discretion, after consultation with Developer.

3.8. Relocation Assistance. The Agency shall be responsible for providing relocation assistance to all businesses displaced by the Project. The Agency will permit the Developer to assist the Agency in said relocation efforts provided that the Developer complies with the intent of the following Relocation Laws. The Agency shall comply with the requirements of the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 et seq., the Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 et seq., and regulations promulgated pursuant thereto, N.J.A.C. 5:40-1.1 et seq. (collectively, the "Relocation Laws"). The Agency shall prepare a Workable Relocation Assistance Plan ("WRAP") and submit said WRAP to the Department of Community Affairs, as required by the Relocation Laws. The Agency may retain, after consultation with Developer, and at Developer's sole cost and expense, a relocation consultant or firm to provide professional services in connection with preparation of the WRAP and providing relocation assistance to displaced businesses. Developer and the Agency shall cooperate fully as necessary to prepare the WRAP.

3.9. Costs Paid by Developer. Developer agrees to be fully responsible for and to reimburse the Agency and the Borough for all of the Agency's costs associated with the Project, including costs incurred prior to the execution of this Agreement (collectively, the "Agency Costs"). The Agency Costs shall include the following:

a. The purchase price for the Agency Parcels, whether acquired by condemnation or private negotiation;

b. All costs and fees incurred in complying with Redevelopment Law, the Eminent Domain Act and any other laws relating to the Project or Project Site including, but not limited to, legal fees, surveying, engineering, environmental investigation, historical consultant costs, appraisal, and other professional fees, including fees for the condemnation commissioners;

██████ c. Administrative and staff costs incurred by the Agency in connection with the Project, including a prorated share of the Executive Director's salary;

██████ d. Recording fees and real estate taxes to be paid during the process of acquisition, if any, including all taxes due from the Agency after acquisition, both prior to and subsequent to conveyance of the Agency Parcels to Developer;

██████ e. Expenses in excess of the USEPA Grant Funds relating to environmental investigation, remediation, and compliance pursuant to Article 5 of this Agreement (as to the Agency Parcels, Developer will fund the environmental work and coordinate with the Agency to obtain reimbursement of these costs from the condemnation deposits through the cost recovery process);

██████ f. Expenses incurred in complying with the Relocation Laws, including relocation payments to tenants and the fees of any relocation agent or occupancy search firm retained by the Agency;

██████ g. Title insurance fees and premiums, as well as all costs for tidelands grants and other title issues;

██████ h. Liability and property insurance premiums and costs related to the Agency Parcels;

██████ i. All other costs reasonably incurred by the Agency with respect to the Project, provided said costs are submitted to the Developer for its review and comment prior to being paid; and

██████ j. The prior costs of the Agency to prepare the Redevelopment Plan, obtain appraisals, prepare a request for proposals, review all proposals, including costs for legal and environmental services and costs incurred by the MCIA to assist the project in an amount not to exceed \$75,000, which sum shall be paid at the time of execution of this Agreement.

### ██████ 3.10. Security for Agency Costs.

██████ a. Escrow Funds. The Agency acknowledges that the Developer, prior to the execution of this Agreement, deposited with the Agency the sum of Seventy Five Thousand Dollars (\$75,000.00) (the "Escrow Funds"). The Escrow Funds shall be used to pay the Agency Costs, as herein defined. Within fifteen days after receipt by Developer of written notice from the Agency that the amount of the Escrow Funds has decreased below

\$25,000, Developer shall replenish the Escrow Funds to the amount of \$75,000. Should, at any time, the Agency Costs exceed the amount of the Escrow Funds on account, Developer shall pay the full amount of those costs within ten (10) business days of the receipt of written notice that such costs are due. Whenever the Agency is required to deposit funds into court or make payment to any property owner to acquire the Agency Parcels, the Developer shall pay the full amount of those costs to the Agency within ten (10) business days after receiving written notice from the Agency that such costs are due and payable. Developer shall provide condemnation deposits to the Agency by bank cashier's check or certified check of Developer, payable either to the Agency or to "Clerk, Superior Court of New Jersey."

b. Guaranty. Payment of the Agency Costs shall be guaranteed by WSH, LLC (the "Guarantor"). Simultaneously with the execution of this Agreement, the Guarantor shall provide the executed Guaranty Agreement, in substantially the form attached to this Agreement as **Exhibit F**.

3.11. Payment Procedures. Copies of all invoices received by the Agency for Agency Costs shall be submitted to the Developer and the Agency shall pay each invoice within thirty (30) business days after receipt. The Agency may draw from the Escrow for payment of Agency Costs.

#### ARTICLE 4

4.1. Escrow for Off-Site Fire House. Upon the execution of this Agreement, Developer shall provide Agency with a deposit of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be held in escrow in an interest-bearing account (hereafter "deposit monies"). Said deposit monies represent a good faith deposit toward the total sum of One Million Dollars (\$1,000,000) for the acquisition of off-site property for a fire house, as well as the construction of the fire house. The Agency may remove this sum from escrow and use same for the above purpose at the beginning of the Development Period. The Developer agrees to provide the balance of Seven Hundred Fifty Thousand Dollars (\$750,000.00) to the Agency as follows:

a. Two Hundred Fifty Thousand Dollars (\$250,000.00) when the certificates of occupancy for eighty-one (81) of the Residential Units ("single family, town houses, multi-level units and senior apartment complex") have been issued.

b. Two Hundred Fifty Thousand Dollars (\$250,000.00) when the certificates of occupancy for one hundred sixty-two (162) of the Residential Units have been issued.

c. Two Hundred Fifty Thousand Dollars (\$250,000.00) when the certificates of occupancy for two hundred ninety-one (291) of the residential units have been issued.

All of the interest accrued on the deposit shall belong to Developer.

## **ARTICLE 5 - ENVIRONMENTAL COMPLIANCE AND ESTIMATED ENVIRONMENTAL COSTS**

5.1. Environmental Compliance in General. As between Developer and the Agency, Developer agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions on, under or migrating to or from the Project Site or anything affected off-site, as may be required by applicable environmental laws and regulations, regardless of whether the property is condemned by the Agency. Developer shall bear all costs for assessment and remediation of the site in excess of the Grant Funds. Developer also agrees that it shall use its best efforts to obtain all environmental approvals for the cleanup of the Project Site, including but not limited to Letters of Nonapplicability, or No Further Action Letters and covenants not to sue from the NJDEP with respect to any such environmental conditions and any remediation funding agreement which may be required by the NJDEP. Any environmental cleanup costs not paid by the present owners of the relevant Agency Parcels shall be the responsibility of Developer.

5.2. "ISRA" Compliance. Developer, as agent for the Agency, shall prepare and submit all applications and documentation required to comply with the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA") prior to the Agency's acquisition of the Agency Parcels. With the Agency's cooperation, Developer shall use its best efforts to obtain from the NJDEP Letters of Nonapplicability, No Further Action Letters, or other appropriate documentation evidencing compliance with ISRA. The Agency shall not be responsible for any environmental cleanup costs or for the failure to obtain ISRA clearance Letters of Nonapplicability. The Developer shall assume the responsibility for such environmental compliance. Developer's costs with respect to the Agency Parcels may be reimbursed through cost recovery actions secured by the Estimated Environmental Costs held in trust in the condemnation actions. In addition, in connection with the Agency parcels, the Developer shall assume any and all obligations of the Agency with regard to any claims for past, present or future environmental contamination and indemnify and hold harmless the

Agency against any such claims by any third party or governmental agency.

5.3. Agency Cooperation and Environmental Reports. The parties acknowledge that environmental investigation and remediation of the Project Site will be coordinated by the MCIA, using the "Triad Approach to Site Remediation" approved by the NJDEP. The Agency and Developer shall cooperate fully with each other and with the efforts of the "Triad" team to obtain appropriate evidence of environmental compliance. Each party, when possessing title to any portion of the Project Site, shall sign any necessary applications or other submissions to the NJDEP, USEPA or other regulatory body. The Agency and Developer shall provide to each other and their respective engineering consultants any and all copies of environmental reports which either party obtains or has possession of in connection with the Project Site.

5.4. Determination of Estimated Environmental Costs in Condemnations. It is anticipated that Developer, under the auspices of the "Triad" team, will diligently carry out preliminary assessments of the Project Site during the Pre-Development Period, as set forth in this Agreement. As to any properties exhibiting areas of concern, Developer shall conduct Site Investigations and obtain determinations of Estimated Environmental Costs. The Preliminary Assessment and any Site Investigations shall comply with the NJDEP's Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1 et seq. Upon delivery of a Condemnation Notice with respect to any Agency Parcel, the Developer shall complete its determinations of Estimated Environmental Costs and provide the Agency with the Estimated Environmental Costs for the Agency Parcels as soon as practicable.

5.5. Developer's Waiver of Pre-Condemnation Environmental Assessments. At any time prior to the filing of a Verified Complaint, Developer may request that the Agency proceed on the basis of an "as clean" appraisal and reservation of rights with respect to a separate cost recovery action, waiving the Pre-Condemnation Environmental Assessments. Developer acknowledges and accepts the risk that such a waiver may jeopardize the Agency's ability to retain the Estimated Environmental Costs in trust pending the outcome of a cost recovery action. The waiver contemplated in this section is intended only to provide Developer with discretion as to recovery of the Estimated Environmental Costs. Nothing contained in this section shall be interpreted to abridge or modify Developer's obligations with respect to the investigation and remediation of the Project Site.



5.6. Natural Resource Defense Damages. As between Agency and Developer, Developer shall be responsible for any natural resource defense damages assessed by either the NJDEP or State of New Jersey.

**ARTICLE 6 - PROPERTY MAINTENANCE AND MANAGEMENT  
DURING THE PRE-DEVELOPMENT AND THE DEVELOPMENT PERIOD.**

6.1. Insurance. The Agency will secure liability insurance in the amount of \$5,000,000 on any Agency Parcels acquired pursuant to this Agreement, naming the Agency and Developer as insured parties and insuring the Agency and Developer against the claims of third parties arising from injuries occurring on the Agency Parcels while owned by the Agency. The premium for this insurance shall be included in the Agency Costs. The Agency shall add the Agency Parcels to its existing policy, if acceptable to Developer, but shall otherwise purchase insurance from a carrier of Developer's choice. During the period of the Developer's ownership, the Developer shall have the right, but not the obligation, to maintain the liability insurance in the same form, and naming the Agency as an insured party, upon five (5) days notice to the Agency.

6.2. Management of the Project Site. Commencing upon the Agency's acquisition of the Agency Parcels and continuing until the Agency Parcels are conveyed to the Developer, the Agency shall manage the Agency Parcels. Management by the Agency shall include, without limitation, collecting rent, providing security, and maintaining insurance policies with respect thereto. The Agency shall have the right to engage a management company to assist it in connection with the management of the Site. The cost(s) in connection with the management consultant shall be deemed an Agency cost, which shall be reimbursed by Developer in accordance with the provisions of Section 3.9. Prior to retaining any such management company, the Agency shall allow the Developer a reasonable opportunity to assist in said management responsibilities. If, however, the Agency is dissatisfied with such assistance, it may, at its sole discretion, retain a management company after consultation with Developer.

**ARTICLE 7 - GOVERNMENTAL AND  
OTHER APPROVALS, CONSTRUCTION AND FINANCING OF PROJECT**

7.1. Scope of Governmental Approvals. The Developer has prepared or will cause to be prepared such plans, drawings, documentation, presentations and applications (hereinafter collectively called "Governmental Applications") as may be

necessary and appropriate for the purpose of obtaining any and all governmental approvals for the Project, including, without limitation, the following: site plan and subdivision applications, as necessary under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; construction plans and specifications for obtaining building permits for the Project; environmental approvals and any and all other necessary permits, licenses, consents and approvals (hereinafter collectively called the "Governmental Approvals"). All of the Governmental Applications shall be in conformity with the Redevelopment Plan and this Agreement and any and all federal, state, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto. Nothing contained herein shall be construed to limit the Developer's rights under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., including the right to apply for any bulk variances or design waivers deemed necessary or appropriate, provided, however, that the Developer acknowledges that its rights are constrained by the Redevelopment Plan. Subject to the Force Majeure provision set forth in Article 14 hereof, Developer shall file for site plan approval within one hundred twenty (120) days after the beginning of the Development Period.

7.2. Construction of Project. Upon the Developer's obtaining (i) title to the Project Site and (ii) the Governmental Approvals as defined in this Article 7, the Developer will commence and diligently prosecute to completion, the undertaking of the Project in accordance with the Governmental Approvals and the Redevelopment Plan. The Developer shall complete the Project within the Development Period. The Developer shall be responsible for the letting of contracts for the Project, including contracts for the construction and supervision of construction, obtaining acceptance of the completed Project or parts thereof, obtaining certificates of occupancy and all other matters incidental to performance of the duties and powers expressly granted herein in connection with the acquisition and undertaking of the Project.

7.3. Concept Plan. The Project shall consist of the Project as described in Article 1.1 and as more specifically described in the Concept Plan attached hereto as **Exhibit B**. Minor deviations from the Concept Plan shall be acceptable if approved by the Planning Board of the Borough (hereinafter referred to as the "Planning Board"), provided such deviations do not conflict with the provisions of the Redevelopment Plan. Developer shall notify the Agency, in writing, of any departure from the Concept Plan.

7.4. Construction Schedule and Extension of Deadlines. Construction of the Project shall commence on the dates set forth in the Phasing Schedule and/or Project Timeline attached hereto as **Exhibit C**, and shall be substantially completed on the date set forth on **Exhibit C** (the "Completion Date"). Substantial completion is defined to mean the issuance of certificates of occupancy for the Project. The Project shall be substantially completed by May 31, 2008.

The time for commencement or completion of the Project shall also be extended for a period of time equal to any delay in construction due to any of the causes set forth in Article 14 hereof or as a result of any pending or threatened administrative procedures or litigation that may interfere with the Developer's ability to begin or complete the construction of the Project.

7.5. Progress Reports. The Developer shall make, in such detail and at such times as may be reasonably required by the Agency, but not more often than monthly, a report in writing concerning the actual progress of the Project with respect to the acquisition of the Project Site and construction of the Project improvements.

7.6. Compliance with Federal, State, County and Local Regulations. The Project shall comply with applicable federal, state, county and city standards and specifications. Plans for the Project shall be subject to review and approval by the Planning Board.

7.7. Insurance. At all times during construction of the Project, and until the Project is available for its intended use, the Developer shall maintain or cause to be maintained at its own cost and expense, with responsible insurers licensed to do business in the State of New Jersey, the following kinds and the following amounts of insurance with respect to the Project and any portion of the Project Site that may be owned or controlled by Developer, with such variations as shall reasonably be required to conform to customary insurance practice:

a. Builder's Risk Insurance during the term of construction which will protect the insured parties against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief and name the Agency as an additional named insured. The limits of liability will be equal to one hundred percent (100%) of the insurable value of the Project, including items of labor and


materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction.

b. Comprehensive General Liability Insurance as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and shall name, inter alia, the Agency and the Borough as additional named insureds. Limits of liability shall not be less than \$5,000,000.

c. Worker's compensation insurance to the full extent required by New Jersey state law for all of the Developer's employees.

d. The Developer shall provide proof of all required insurance coverage to the Agency upon the acquisition of any of the Developer's parcels. Thereafter, upon each anniversary date of this Agreement, Developer shall submit proofs of insurance, for the succeeding year. Except for workers compensation insurance, all policies of insurance required to be maintained by Developer shall name Developer, the Agency and the Borough, and any other appropriate persons, as their respective interest may appear, as the insured parties, and shall be reasonably satisfactory to the Agency. The Developer shall not allow the policies to be terminated or canceled unless the Agency is given thirty (30) days advance notice.

#### 7.8. Indemnification.

 a. The Developer and Guarantor agree to indemnify and hold harmless the Agency and the Borough against, and the Developer shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the Agency or the Borough may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, relating to the Developer's activities in constructing the Project or based upon or arising out of contracts entered into by the Developer which relate to construction of the Project, or arising solely out of the acquisition of real property or undertaking of the Project, including but not limited to, any and all claims by workmen, employees and agents of the Developer and unrelated third parties, which claims arise from the undertaking of the Project, the maintenance and functioning of the Project Site, or any other activities of the Developer

within the Project Site during the undertaking of the Project. It is mutually agreed by the Developer and the Agency that neither the Agency, the Borough, nor their directors, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Developer shall save the Agency, the Borough, their directors, officers, agents and employees harmless from any claim or suit in connection with the Developer's obligations under this Agreement, except for any claim or suit arising from the intentional and willful acts of the Agency and/or the Borough.

b. The Developer and Guarantor, at their own cost and expense, shall defend any and all such claims, suits and actions, as described in the preceding paragraph (a), which may be brought or asserted against the Agency and/or the Borough, their respective directors, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Developer, the Agency, the Borough, and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

c. Any cost for reasonable attorneys' fees in situations where it is necessary for the Agency and/or the Borough to engage its own attorneys, experts' testimony costs and all costs to defend the Agency and/or the Borough or any of its directors, officers, agents, servants, or employees shall be reimbursed to it by the Developer in connection with such indemnification claim.

7.9. Certificate of Completion. Upon completion of the Project in accordance with the Governmental Approvals, if requested by the Developer, and provided the Developer is not otherwise in default under this Agreement, the Agency agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Developer has performed all of its duties and obligations under this Agreement and has completed the Project in accordance with the requirements of this Agreement.

The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the Developer's obligation to construct the Project within the dates for the commencement and completion of same. Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the Project Site was determined to be in need of

redevelopment shall be deemed to no longer exist, the Project Site and the Project shall no longer be subject to eminent domain by the Agency, and the Developer shall be released from the prohibition against assignment and transfer set forth herein

If the Agency shall fail or refuse to provide the Certificate of Completion within thirty (30) days after written request by the Developer, the Agency shall provide to the Developer a written statement setting forth in detail the respects in which it believes that the Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts will be necessary in order for the Developer to be entitled to a Certificate of Completion. The Agency shall provide the Certificate of Completion within thirty (30) days of the Developer's compliance with the items set forth in the written statement.

7.10. Financing. The anticipated total development cost of the Project is approximately \$60,000,000. Developer will finance the property with a combination of a first mortgage loan and Developer equity. Developer shall submit a detailed financing plan to the Agency for the Agency's review and approval within one hundred eighty (180) days after commencement of the Development Period. Said financing plan shall contain binding commitments from banks or other financial institutions satisfactory to the Agency.

## **ARTICLE 8 - COVENANTS AND RESTRICTIONS**

8.1. Declaration of Covenants and Restrictions. The Developer acknowledges and agrees that the Agency will record or cause to be recorded one or more Declarations of Covenants and Restrictions (hereinafter called "Declaration") with respect to the Project Site, imposing upon the Project Site the agreements, covenants and restrictions required pursuant to Sections 7.4, 7.9, 8.2. and Articles 9, 10, 11 and 12 of this Agreement, to be observed by the Developer, its successors and assigns. The terms of the Declaration shall also be included in the deed(s) by which the Agency Parcels are conveyed to the Developer. All provisions hereinafter with respect to the insertion in or the application to the deed of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

8.2. Description of Covenants. The covenants to be imposed upon the Developer, its successors and assigns, and recorded in the Declaration, shall set forth that the Developer and its successors and assigns shall:

a. Devote the Project Site to the uses specified in the Redevelopment Plan, as it may be amended, and shall not devote the Project Site to any other use(s);

b. Not discriminate upon the basis of age (except for senior citizen housing), race, color, creed, religion, ancestry, national origin, sexual orientation, gender or marital status in the sale, lease, rental, use or occupancy of the Project Site or any buildings or structures erected or to be erected thereon, or any part thereof; and

c. In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Site and/or the Project is restricted upon the basis of race, color, creed, religion, ancestry, national origin, sexual orientation, gender or marital status, and the Developer, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age (except for senior citizen housing), race, color, creed, religion, ancestry, national origin, sex or marital status.

8.3. Effect and Term of Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 8.2 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and the Borough and any successor-in-interest to the Project Site or any part thereof, against the Developer, its successors and assigns and every successor-in-interest therein, and any party in possession or occupancy of the Project Site, the Project or any part thereof. It is further intended and agreed that the agreements and covenants set forth in Section 8.2(a) shall remain in effect until the expiration of the Redevelopment Plan (at which time such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in Sections 8.2(b) shall remain in effect without limitation as to time; provided that such agreements and covenants shall be binding on the Developer itself, each successor-in-interest to the Project Site, or any part thereof,

and each party in possession or occupancy, respectively, only for such period as the Developer or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project Site and/or the Project.

8.4. Enforcement by the Borough and/or the Agency. In amplification, and not in restriction of the provisions of this Article 8, it is intended and agreed that the Borough and/or the Agency and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Agreement and the Declaration, both for and in their own right, but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough and the Agency (and the Declaration shall so state). This Section 8.4. shall apply for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough and/or the Agency has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Borough and/or the Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

## **ARTICLE 9 - PROHIBITION AGAINST TRANSFER**

9.1. Prohibition Against Speculative Development. Because of the importance of the Project to the general welfare of the community and the public aids that have been made available by law for the purpose of making such development possible, the Developer represents and agrees that its acquisition of the Project Site and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of undertaking the Project as provided herein and not for speculation.

9.2. Prohibition Against Transfer. The Developer further represents and agrees for itself, its successors and assigns, that except only by way of security for and only for the purpose of obtaining the financing necessary to enable the Developer or any successor-in-interest to the Project Site, or any part thereof, to perform its obligations with respect to undertaking and completing the Project and any other purpose authorized by this Agreement, that the Developer has not made or created, and that it will not, prior to the completion of the



Project, make or create, or suffer to be made or created, any sale, conveyance or transfer in any other mode or form of the Project Site and the Project or any part thereof or any interest therein, without the prior reasonable written approval of the Agency, except for the transactions identified in Section 9.3 hereof.

9.3. Permitted Transactions. The following transactions are deemed not to be transfers, are not subject to the prohibition set forth in Section 9.2, and shall not require prior approval by the Agency: (a) subject to Articles 10 and 12 of this Agreement, a mortgage or mortgages and other liens and encumbrances for the purposes of financing the costs associated with, or incurred in connection with, the acquisition, development and construction of the Project (a "Mortgage"); (b) utility and other development easements; (c) assignment of Developer's rights under this Agreement or conveyance of the Project Site or an interest therein to an urban renewal entity controlled by or under common control with the Developer in the event that such a conveyance is required in connection with any long term tax exemption pursuant to N.J.S.A. 40A:20-1 et seq., relating to the Project Site or a portion thereof; (d) a Limited Liability Company or other Affiliated Entity to carry out the Project provided the principals of the Affiliated Entity are the same as Developer's principals and Developer and Guarantor remain obligated to carry out the terms of this Agreement and Guarantee; and (e) any contract or agreement with respect to any of the foregoing transactions.

9.4. Restraints Against Transfer. The Declaration shall contain a restriction against transfers as set forth in Section 9.2 and 9.3, and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 9.2, the Agency and the Borough shall be entitled to the issuance of an injunction restraining such transfer, and legal fees and related expenses of the Agency and the Borough in connection with any such legal action.

9.5. Conditions of Transfer. Except as otherwise provided in this Agreement, and except with respect to transactions permitted under Section 9.3, the Agency shall be entitled to require, as conditions to the approval of any transfer that:

a. Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Agency, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer; and

b. Any proposed transferee, by instrument in writing satisfactory to the Agency and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Agency and the Borough, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; and

c. All instruments and other legal documents involved in effecting any transfer shall be submitted to the Agency for review and, if approved by the Agency, approval shall be indicated to the Developer in writing; and

d. Any transfer approved by the Agency shall release the Developer from any further obligation under this Agreement from and after the closing of the approved transfer, except as to any liability or obligation of the Developer incurred prior to such transfer and except as otherwise provided in this Agreement or in the written approval by the Agency; and

e. The Developer and its transferees shall comply with any other reasonable conditions that the Agency may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

#### **ARTICLE 10 - MORTGAGE FINANCING: RIGHTS OF MORTGAGEE**

10.1. Notice to Agency. Prior to the completion of the Project, neither the Developer nor any successor-in-interest to the Project Site, the Project or any part thereof shall engage in any financing or any other transaction creating any Mortgage upon the Project Site and/or the Project, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Project Site and/or the Project, except for construction and other liens incurred in the ordinary course in connection with constructing the Project and not overdue or being contested in good faith and for the purpose of obtaining funds in connection with the Project. The Developer or its successor-in-interest shall notify the Agency in advance of any financing, secured by any Mortgage, which it proposes to enter into with respect to the Project Site, the Project or any part thereof and, in any event, the Developer shall promptly notify the Agency of any encumbrance or lien that has been created on or attached to the Project Site and/or the Project, whether by voluntary act of the Developer or otherwise, upon obtaining knowledge or notice of same.

10.2. Completion of the Project. 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, the holder of any Mortgage (the "Holder," which term includes any holder who obtains possession of the Project Site, the Project or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but does not include (i) any other party who thereafter obtains possession of the Project Site, the Project or such part from or through such holder or (ii) any purchaser at foreclosure sale other than the holder of the Mortgage itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Declaration be construed to so obligate such Holder, provided that nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Project Site, the Project or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Redevelopment Plan and this Agreement.

10.3. Notice to Mortgagee. Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer of its obligations or covenants under this Agreement, the Agency shall at the same time forward a copy of such notice or demand to each Holder at the last known address of such Holder shown in the records of the Agency.

10.4. Mortgagee's Right to Cure Default and Assume the Developer's Obligations. After any breach or default referred to in Section 10.3 above, each Holder may, at its option, cure or remedy such breach or default and add the cost thereof to the lien of the Mortgage, provided that, if the breach or default is with respect to construction of the Project, the Holder shall not be permitted or authorized, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Holder's security) without first having expressly assumed, by written agreement satisfactory to the Agency, all of the Developer's obligations under this Agreement, including but not limited to the Developer's obligation to complete, in the manner provided in this Agreement, the Project on the Project Site or the part thereof to which the lien or title of such Holder relates. The Agency shall not unreasonably reject any Holder's

proposal for assumption of the Developer's obligations and completion of the Project, provided that the Holder retains title to the Project until it is completed. Any Holder's proposed transfer of its interest in the Project, prior to completion, shall be subject to the Agency's consent, as set forth in Article 9 herein, which consent shall not be unreasonably withheld. Any such Holder who shall complete the Project or applicable part thereof shall be entitled, upon written request made to the Agency, to receive the Certificate of Completion as hereinabove set forth in Section 7.9 hereof.

#### **ARTICLE 11 - DEFAULT PRIOR TO CONVEYANCE OF AGENCY PARCELS TO REDEVELOPER**

11.1. Initial Remedy. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within sixty (60) days of receiving written notice from another, proceed to commence to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the 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.

11.2. Remedies in the Event of Termination of Agreement. If, prior to the conveyance of the Agency Parcels to Developer, the Developer (or any successor-in-interest) assigns or attempts to assign this Agreement or any rights in the Project or the Project Site, contrary to the provisions of this Agreement, or any default or failure referred to in Section 11.1 shall not be cured within sixty (60) days after the date of written demand by the Agency, then the Agency shall terminate the Developer's designation as the Developer of the Project and shall have the right to withdraw, to the extent possible, from lease agreements, purchase agreements and condemnation proceedings, if any, heretofore undertaken. Upon such termination, there shall be no further rights or obligations of the parties, except as expressly set forth in this Section 11.2. The Developer shall pay over to the Agency all of the costs and/or damages (including reasonable counsel fees) incurred by the Agency on account of the default of such party and/or arising out of or resulting from the withdrawal of the Agency from any purchase agreement and/or condemnation proceeding. The

Agency shall have the right to apply to the aforementioned costs or damages incurred by the Agency as aforesaid, any funds of the Developer in the hands of the Agency at the time of such default and termination or returned to the Agency as the result of the Agency's termination or withdrawal from any lease agreement, purchase agreement and/or condemnation proceeding. In the event of such a default by Developer, the Agency shall be entitled to retain the initial deposit money of Two Hundred Fifty Thousand Dollars (\$250,000) contribution for off-site acquisition as set forth in Article 4 hereof.

**ARTICLE 12 - DEFAULT AFTER CONVEYANCE OF THE  
AGENCY PARCELS TO THE DEVELOPER AND DURING THE DEVELOPMENT  
PERIOD**

12.1. Events of Default. Subsequent to the Agency's conveyance of the Agency Parcels and prior to the Agency's issuance of a Certificate of Completion for the Project and during the Development Period, the following shall constitute Events of Default:

a. The Developer or its successor-in-interest shall default in or breach its obligations with respect to the construction of the Project in a material respect (including the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work (unless such suspension arises out of a delay set forth in Article 14 hereof), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within six (6) months (twelve (12) months if the default is with respect to the date for completion of the Project) after written demand by the Agency to do so or such longer period if incapable of cure within such six- or twelve-month period, provided that the Developer has commenced and is diligently prosecuting such cure; or

b. The Developer or its successor-in-interest shall fail to pay any real estate taxes, payments in lieu of taxes, or assessments on the Project Site, the Project or any part thereof when due, if any, or shall place thereon any encumbrance or lien not permitted by this Agreement, or shall suffer any levy or attachment to be made, or any unauthorized construction lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Agency made for such payment, removal, or discharge, within ninety (90) days after written demand by the Agency to do so; or

c. There is, in violation of this Agreement, any transfer of the Developer's interest in the Project or the Project Site, other than a transaction permitted under Sections 9.3 and 9.5 hereof, and such violation shall not be cured within thirty (30) days after written demand served upon the Developer by the Agency, unless extended in writing; or

d. The Developer shall not make the payments for off-site improvements as set forth in Article 4 hereof;

(e) The Developer shall fail to comply with the provisions of this Agreement with respect to the Escrow Funds, and payment of Agency Costs; or

(f) The Developer shall have (1) applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (2) a custodian shall have been legally appointed with or without consent of the Developer; (3) the Developer has: (a) made a general assignment for the benefit of creditors, or (b) has filed a voluntary petition in bankruptcy or a petition of an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (4) the Developer has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (5) the Developer shall take any action for the purpose of effecting any of the foregoing; (6) a petition in bankruptcy shall have been filed against the Developer and shall not have been dismissed for a period of ninety (90) consecutive days; (7) an Order for Relief shall have been entered with respect to or for the benefit of the Developer under the Bankruptcy Code; (8) an order, judgment or decree shall have been entered, without the application, approval or consent of the Developer by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Developer or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (9) the Developer shall have suspended the transaction of its usual business.

12.2. Remedies. Upon the occurrence of any Event of Default, subject to the provisions of Article 10 hereof, the Agency shall have the right in its sole and absolute discretion, upon ninety (90) days' notice to the Developer and any mortgagee of the Developer, to terminate this Agreement and designate a replacement Developer with respect to the Project Site and the rights and obligations set forth in this Agreement. This provision shall be entered in the Declaration. Such replacement

shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any Mortgage.

12.3. Replacement of the Developer. Upon termination of the Developer's rights under this Agreement pursuant to Section 12.1, at the Agency's sole discretion, the Agency shall, pursuant to its responsibilities under New Jersey law, use its best efforts to designate a replacement Developer for the Project (subject to such permitted Mortgage as may exist against the Project). The replacement Developer shall be designated as soon and in such manner as the Agency shall find feasible and consistent with the objectives of New Jersey law and the Redevelopment Plan. The replacement Developer shall be a qualified and responsible party or parties as determined by the Agency, who will assume the Developer's obligation of completing the Project in its stead as shall be satisfactory to the Agency and in accordance with the uses specified in this Agreement and the Redevelopment Plan. Proceeds resulting from the conveyance of the Project Site to the replacement Developer shall be applied:

a. First, to all reasonable costs and expenses incurred by the Agency, including but not limited to legal fees and related expenses incurred by the Agency in connection with the Project; all taxes, assessments, and water and sewer charges, if any, with respect to the Project or any part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Project at the time of the Agency's reacquisition of the Project or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion or maintenance of the Project or any part thereof; and any amounts otherwise owed to the Agency by the Developer and its successors or transferees in accordance with the terms of this Agreement; and

b. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Developer's actual costs associated with the Project, including Project Site acquisition, engineering, planning, site improvements, marketing and other project development costs paid for by the Developer to the extent such costs have not already been paid from the proceeds of any financing. Any balance remaining after such reimbursements shall be retained by the Agency as its property.

### **ARTICLE 13 - REPRESENTATIONS**

13.1. The Developer and the Guarantor each hereby makes the following representations and covenants, as such relates to the Developer or the Guarantor respectively (each of these parties being referred to by the pronoun "it"):

a. It has the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth and as set forth in the Redevelopment Plan existing on the date of this Agreement.

b. It is a duly organized and validly existing legal entity under the laws of the State of New Jersey and has duly adopted the necessary resolutions approving and authorizing the execution and delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on its behalf.

c. To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by it pursuant to this Agreement; or (ii) is likely to result in a material adverse change in such entity's Agency, property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

d. Its execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any partnership and/or stockholder agreement or of any agreement, mortgage, indenture, instrument or judgment, to which it is a party.

e. It will use its best efforts to assure the completion of the Project within the time periods specified in this Agreement.

### **ARTICLE 14 - DELAYS**

14.1. For the purposes of any of the provisions of this Agreement, neither the Agency nor the Developer, as the case may be, nor any successor-in-interest, shall be considered in breach of, or in default with respect to its obligations hereunder because of any forced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or



omissions of the other parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing, such causes, and actions or inactions by any federal, state or local governmental or quasi-governmental Agency with respect to the Governmental Approvals or the development of the Project, if such actions or inactions are not caused by the Developer. It is the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Agency or the Developer shall be extended for the period of the forced delay.

#### **ARTICLE 15 - WAIVER**

15.1. No waiver made by any party with respect to the performance (including the manner or time of performance) of any obligation of any other party, or with respect to the satisfaction of any condition to the waiving party's own obligations under this Agreement, shall be considered a waiver of any rights of the party making the waiver, except with respect to those rights expressly waived in writing. Moreover, no such written waiver shall constitute a waiver with respect to any other rights of the waiving party or any other obligations of any other party.

#### **ARTICLE 16 - COOPERATION AND COMPLIANCE**

16.1. The parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Agency further agrees to take such action as may be reasonably requested by any mortgagee of Developer in connection with obtaining financing for the Project; provided, however, that the reasonable cost of such action shall be borne by the Developer.

#### **ARTICLE 17 - NOTICES AND DEMANDS**

17.1. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or

addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Article 17.

**TO THE AGENCY:**

Milltown-Ford Avenue Redevelopment Agency  
89 Washington Avenue  
Milltown, New Jersey 08850  
Attention: Executive Director

**COPIES TO:**

David B. Himelman, Esq.  
Himelman, Wertheim & Geller, LLC  
1405 Route 18 South, Suite 201  
Old Bridge, New Jersey 08857

John A. Hoffman, Esq.  
Wilentz, Goldman & Spitzer, P.A.  
90 Woodbridge Center Drive  
Post Office Box 10  
Woodbridge, New Jersey 07095-9920

**TO THE DEVELOPER:**

Boraie Development, LLC  
120 Albany Street  
New Brunswick, New Jersey 08901  
Attention: Mr. Omar Boraie

**COPY TO:**

Elizabeth D. Tice, Esq.  
Lynch Martin  
830 Broad Street  
Shrewsbury, New Jersey 07702

**TO GUARANTOR:**

WSH, LLC  
120 Albany Street  
New Brunswick, New Jersey 08901  
Attention: Mr. Omar Boraie

## **ARTICLE 18 - TITLE OF ARTICLES**

18.1. The titles of the several Articles of this Agreement, as set forth in the Table of Contents or at the heads of said Articles, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

## **ARTICLE 19 - SEVERABILITY**

19.1. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof.

## **ARTICLE 20 - SUCCESSORS BOUND**

20.1. The Agreement shall be binding upon the respective parties hereto and their successors and assigns.

## **ARTICLE 21 - GOVERNING LAW**

21.1. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

## **ARTICLE 22 - SCHEDULES AND EXHIBITS**

22.1. Any and all Schedules and Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

## **ARTICLE 23 - ENTIRE AGREEMENT**

23.1. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

## **ARTICLE 24 - EFFECTIVE DATE**

24.1. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the parties hereto have executed and delivered this Agreement and all of the other agreements referred to herein or relative hereto have been fully executed and delivered by the parties to such agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and their corporate seals (where applicable) affixed and attested this 11<sup>th</sup> day of May, 2004.

ATTEST:

Richard K Rydstrom  
Secretary

THE MILLTOWN-FORD AVENUE  
REDEVELOPMENT AGENCY

By: Anthony J. Zarilla Sr  
Name: Anthony J. ZARILLA Sr  
Title: CHAIRMAN

WITNESS:

BORAIE DEVELOPMENT, LLC

Pamela A. Szabo  
Name: PAMELA A. SZABO  
Title: Admin. Sec.

By: Omar Berme  
Name: Omar Berme  
Title: Managing Partner

WITNESS:

GUARANTOR:

Pamela A. Szabo  
Name: PAMELA A. SZABO  
Title: Admin. Sec.

WSH, LLC

By: Samir Borrie  
Name: Samir Borrie  
Title: PRESIDENT

# FIRST AMERICAN TITLE INSURANCE COMPANY

## TITLE INSURANCE COMMITMENT

File Number: 133 GLA 210291B

### SCHEDULE C LEGAL DESCRIPTION

**All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Milltown, County of Middlesex, State of New Jersey:**

BEGINNING at a point formed by the intersection of the southeasterly line of Ford Avenue with the northeasterly line of Clay Street; and running thence

- 1) Along the said southeasterly line of Ford Avenue, North 57 degrees, 15 minutes East, 279.56 feet to land now or formerly of Mary Kohlepp; thence
- 2) Along said land South 32 degrees, 45 minutes East, 125 feet to a point; thence
- 3) Still along the same North 57 degrees, 15 minutes East, 120 feet to a point; thence
- 4) South 32 degrees, 45 minutes East, 11.80 feet to a point; thence
- 5) North 57 degrees, 15 minute East; 8 feet thence
- 6) South 32 degrees, 45 minutes East, 38 feet; thence
- 7) North 57 degrees, 15 minutes East, 18 feet; thence
- 8) South 32 degrees, 45 minutes East, 186.77 feet to a point; thence
- 9) South 57 degrees, 15 minutes West, 262.52 feet to a point; thence
- 10) South 32 degrees, 50 minutes East and along a line of equi-distant between Building Nos. 8 and 9 as shown on "Survey of Property of Michelin Tire Co., Milltown, N.J., dated November 21, 1928", 224.06 feet to a point; thence
- 11) South 1 degree, 56 minutes West, 119.16 feet to the northerly line of Mill Pond; thence
- 12) In a general westerly direction along said Mill Pond and Lawrence Brook to the termination of the seventh course as set forth in a deed bearing date of December 21, 1945 by Alsol Corporation to A. G. Realty Corporation; thence
- 13) Along said seventh course North 57 degrees, 15 minutes East, 1058.04 feet to a point in the center line of the existing railroad tracks partly upon the premises herein described and partly upon the premises adjoining to the North; thence

Issued by:

**General Land Abstract Company**

P.O. Box 327

Plainsboro, NJ 08536-0327

Telephone: (609) 951-9500 (732) 287-3636 (609) 895-0707

Fax: (609) 951-0044 (732) 287-4778 (609) 895-9752

# FIRST AMERICAN TITLE INSURANCE COMPANY

14) North 32 degrees, 45 minutes West, 277.57 feet to a spike in the center of Clay Street; thence

15) North 57 degrees, 15 minutes East, 25 feet to the northeasterly line of Clay Street; thence

16) North 32 degrees, 45 minutes West, 84 feet to the point and place of BEGINNING.

**NOTE FOR INFORMATION ONLY: Being Lot(s) 1.02, Block 58, Tax Map of the Borough of Milltown, County of Middlesex.**

Issued by:

**General Land Abstract Company**

**P.O. Box 327**

**Plainsboro, NJ 08536-0327**

**Telephone: (609) 951-9500 (732) 287-3636 (609) 895-0707**

**Fax: (609) 951-0044 (732) 287-4778 (609) 895-9752**

# FIRST AMERICAN TITLE INSURANCE COMPANY

## TITLE INSURANCE COMMITMENT

File Number: 133 GLA 210291C

### SCHEDULE C LEGAL DESCRIPTION

**All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the** Borough of Milltown, County of Middlesex, State of New Jersey:

Being known and designated as Lots 1.01 and 1.07 in Tax Block 58 as shown on the current municipal tax atlas.

Note: The foregoing description is set forth for identification purposes only and will be amended upon receipt of a current ground survey.

**NOTE FOR INFORMATION ONLY: Being Lot(s) 1.01 & 1.07, Block 58, Tax Map of the Borough of Milltown, County of Middlesex.**

Issued by:

**General Land Abstract Company**

P.O. Box 327

Plainsboro, NJ 08536-0327

Telephone: (609) 951-9500 (732) 287-3636 (609) 895-0707

Fax: (609) 951-0044 (732) 287-4778 (609) 895-9752

# FIRST AMERICAN TITLE INSURANCE COMPANY

## TITLE INSURANCE COMMITMENT

File Number: 133 GLA 210291A

### SCHEDULE C LEGAL DESCRIPTION

**All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Milltown, County of Middlesex, State of New Jersey:**

Beginning at a point in the centerline of Clay Street ( a 50 foot wide right of way) said point being distant therein 84.00 feet, as measured southeasterly along said centerline from the point formed by the intersection of the same with the southeasterly line of Ford Avenue ( a 75 foot wide right of way), said point being the same beginning point as recited in a deed from AG Realty Corp. to Algro Knitting Mill, Inc. as recorded in the office of the Clerk of Middlesex County in deed book 1374, beginning at page 132. And from said beginning point running thence;

1. Along the centerline of Clay Street and the continuation thereof, South 40 degrees 14 minutes 30 seconds East, a total distance of 277.57 feet to a point, thence;
2. South 49 degrees 45 minutes 30 seconds West, a distance of 961.36 feet (along the northwesterly line of Lot 1-B) to a point and corner of tax lot 1-G (said point being also the terminus of an unimproved road known as Brook Drive- a 60 foot wide right of way), thence;
3. Along said lot 1-G, North 40 degrees 14 minutes 30 seconds West, a distance of 399.07 feet to a point formed by the intersection of a continuation of said lot line with the centerline of Ford Avenue (or its extension thereof), thence;
4. Along said centerline, North 49 degrees 45 minutes 30 seconds East, a distance of 436.36 feet to a point in the present terminus of Ford Avenue, thence;
5. Along said terminal line and also along the southwesterly line of tax lot 10, South 40 degrees 14 minutes 30 seconds East, a distance of 162.50 feet to a point, thence;
6. Along the rear of lots 10,9,8,7,6 and 5-B, North 49 degrees 45 minutes 30 seconds East, a distance of 261.48 feet to a point, thence;
7. Still along lot 5-B, North 40 degrees 14 minutes 30 seconds West, a distance of 41.00 feet to a point, thence;
8. Along the remainder of lot 5-B, lots 4,3,2,1 and Into Clay Street, North 49 degrees 45 minutes 30 seconds East, a distance of 263.52 feet to the point 5

**NOTE FOR INFORMATION ONLY: Being Lot(s) 1.03 & 5.01, Block 58 /59.01, Tax Map of the Borough of Milltown, County of Middlesex.**

Issued by:

**General Land Abstract Company**

P.O. Box 327

Plainsboro, NJ 08536-0327

Telephone: (609) 951-9500 (732) 287-3636 (609) 895-0707

Fax: (609) 951-0044 (732) 287-4778 (609) 895-9752



# FIRST AMERICAN TITLE INSURANCE COMPANY

## SAMPLE

### ALTA ENDORSEMENT - FORM 1

Title No. 210291A

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

Any assessments for street or other municipal improvements authorized, under construction, or completed at Date of Policy not excepted in Schedule B which now have gained or hereafter may gain priority over the lien of the insured mortgage.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

By \_\_\_\_\_  
Thomas R. Lange, Sr. Vice President

**EXHIBIT A**

**Property Description**

Block 58, Lots 1.01 and 1.07, 1.02, and 1.03, all as shown and designated on the Official Tax Maps of the Borough of Milltown, Middlesex County, New Jersey , being more particularly described in the following metes and bounds description:

**[DESCRIPTION]**

EXHIBIT A-1

Project Site: Ownership Information

<u>BLOCK</u>	<u>LOT(S)</u>	<u>OWNER</u>
58	1.01 and 1.07	Alsol Corporation (Berger) Ford Avenue Milltown, NJ
58	1.02	Peter W. Scheinman, et al., d/b/a Milltown Industrial Sites c/o Richard Segal 2001 U.S. Highway 46, Suite 100 Parsippany, NJ 07054
56	1.03	SB Building Associates c/o NJ Mortgage Acquisition, LLC c/o Schultz Management Group 1480 Route 9 North Woodbridge, New Jersey 07095

EXHIBIT B

Concept Plan