ARTICLE III
REPRESENTATIONS AND WARRANTIES

Section 3.01 Developer's Representations and Warranties. Developer represents and warrants to the Authority as follows:

(a) Due Formation; Power and Authority. Developer is a corporation duly formed, validly existing and in good standing under the Laws of the jurisdiction of its formation, is qualified to do business (if required) and is in good standing in the State, and has full power and authority to consummate the transactions contemplated hereby and to execute, deliver and perform its obligations under this Agreement.

(b) Legally Enforceable Agreements. This Agreement is a legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

(c) Compliance with Laws; Payment of Taxes. Developer is in compliance with all Laws, and the transactions contemplated by this Agreement will not violate any provision of, or require any filing, registration, consent or approval under any Law, presently in effect having applicability to Developer. Developer is in compliance with the provisions of Executive Order #118 promulgated by the Governor of the State of New Jersey, which requires written certification that Developer has not made a contribution that would bar the Authority from awarding and approving the execution of this Agreement. Developer has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies due and payable including interest and penalties.

(d) Litigation. To Developer's actual knowledge, there are no actions, suits or proceedings pending or threatened against or affecting Developer, the Property, or the Project, except actions, suits or proceedings which have been disclosed to the Authority in writing and which are fully covered by insurance or would, if adversely determined, not substantially impair the ability of Developer to perform its obligations under this Agreement; to Developer's actual knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities.

(e) No Conflicts or Defaults. The consummation of the transactions contemplated hereby and the performance by Developer of its obligations hereof has not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank funding or credit agreement, corporate charter, bylaws, operating agreement, partnership agreement or other instrument to which Developer is a party or by which it may be bound or affected.

Section 3.02 Authority's Representations and Warranties. The Authority represents and warrants to Developer as follows:

(a) Due Formation; Power and Authority. The Authority is a public body established in, but not of, the Department of the Treasury of the State and validly existing under and by virtue of the Laws of the State, and has full power and authority to consummate the

transactions contemplated hereby and to execute, deliver and perform its obligations under this Agreement.

(b) Legally Enforceable Agreements. This Agreement is a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

(c) Compliance with Laws. The Authority is in compliance with all Laws, and the transactions contemplated by this Agreement will not violate any provision of, or require any filing, registration, consent or approval under any Law, presently in effect having applicability to the Authority.

(d) Litigation. To the Authority's actual knowledge, there are no actions, suits or proceedings pending or threatened against or affecting the Authority which would, if adversely determined, substantially impair the ability of the Authority to perform its obligations under this Agreement.

(e) No Conflicts or Defaults. The consummation of the transactions contemplated hereby and the performance by the Authority of its obligations hereof has not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank funding or credit agreement, corporate charter, bylaws, operating agreement, partnership agreement or other instrument to which Developer is a party or by which it may be bound or affected.

(f) Solvency. The Authority is, and upon consummation of the transactions contemplated by this Agreement and any other related documents, will be solvent.

(g) Accuracy of Information, Full Disclosure. Neither this Agreement nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of the Authority to Developer in connection with the negotiation of this Agreement or the consummation of the transactions contemplated hereby, or required herein contain any untrue or misleading statement of a material fact or omits a material fact necessary to make the statements herein or therein not misleading; there is no fact which the Authority has not disclosed to Developer in writing which materially affects adversely nor, so far as the Authority can now foresee, will materially affect adversely the business affairs or financial condition of the Authority, or the ability of the Authority to perform its obligations under this Agreement.

ARTICLE IV
COVENANTS

Section 4.01 Developer Covenants. Developer covenants and agrees with the Authority that it will promptly:

(a) Compliance with Laws, Payment of Taxes. Comply or cause compliance, in all material respects, with all Laws applicable to it, the operation of the Project, or the Property, or any part thereof, such compliance to include, without limitation, paying or causing to be paid before the same become delinquent all taxes, assessments and governmental charges imposed on

it, the Project, or the Property, or any part thereof, and promptly furnish the Authority with copies of any written reports received by Developer of any official searches made by Governmental Authorities and any claims of violations thereof.

(b) Continuing Accuracy of Representations and Warranties. Cause all of the representations and warranties made by Developer to the Authority herein to be continuously true and correct in all material respects.

(c) Inspection and Cooperation. Permit the Authority and its representatives to enter upon the Property, upon reasonable written notice, and inspect the Project.

(d) Payment of Costs. Pay or cause to be paid all costs and expenses required for construction, installation and operation of the Project, and the satisfaction of the conditions hereof, including, without limitation (i) all document taxes, recording and filing expenses and fees and commissions lawfully due to brokers in connection with the transactions contemplated hereby; and (ii) starting on the date of transfer of the Property from the Authority to Developer, any and all taxes, insurance premiums, liens, security interests or other claims or charges against the Property or the Project.

(e) Brokers. Indemnify the Authority against claims of brokers arising by reason of Developer's execution hereof or the consummation of by Developer of its obligations contemplated hereby.

(f) Project Publicity and Signage. Allow the Authority, in cooperation with Developer, the right to announce and publicize relevant information with respect to the Project made pursuant to this Agreement, as it deems reasonably appropriate or desirable, by means and media jointly selected by Developer and the Authority. Such publicity may, as agreed to between Developer and the Authority, include all pertinent information relating to the Project including, without limitation, the term, purpose, name of Developer and the Authority, location of the Property, nature of the improvements being constructed and the estimated completion date of same. The Authority shall also have the right to display a sign on the Property in a location approved by Developer. If such sign is provided by the Authority and approved by Developer, Developer shall cause the sign to be displayed as requested by the Authority (provided that such display shall be in conformity with governmental regulations) and shall continue to display such sign during the period reasonably requested by the Authority. The form and content of the sign and/or published information shall be in the reasonable discretion of the Authority and approved by Developer, and shall be considered the sole and exclusive property of the Authority. All expenses related to publicizing the Project and/or the Authority's signage shall be the sole responsibility of the Authority.

(g) Construction Contracts.

(i) Each construction contract for the Project, shall include a provision pursuant to which, (a) the contractor agrees to pay at least prevailing wage rates, pursuant to the Prevailing Wage Act (*N.J.S.A* 34:11-56.25, *et seq.*) and regulations promulgated thereunder (*N.J.A.C.* 12:60-1.1, *et seq.*), to workers for all crafts and trades employed on the Project, (b) negotiate and enter into labor agreements with building trades, where appropriate, and (c) the

contractor agrees to comply with (i) the mandatory affirmative action and prohibition on discrimination requirements listed on ***Schedule G*** attached hereto and by this reference made a part hereof as fully as if set out herein, (ii) the mandatory requirements addressed under Section 6.03 of this Agreement, and (iii) the requirements of Appendix C of Executive Order 151, a copy of which is included in ***Schedule H*** attached hereto and by this reference made a part hereof as fully as if set out herein.

(ii) Developer shall refer to the then current debarment lists of the State and the Casino Control Commission identified on the State Department of Labor website (as same may be revised from time to time, hereinafter the "**Debarment Lists**"), and no entity or person on such Debarment Lists shall be employed or contracted with or by Developer or any contractor or subcontractor in connection with the Project.

(h) Security of Site. Employ or cause to be employed suitable means to protect from theft or vandalism all portions of the Property and the Project and all tools and building materials stored thereon.

(i) Liens and Encumbrances. Except as may be permitted pursuant to the Project Documents, cause the Property and the Project to be kept free and clear of all liens, security interests, and/or other encumbrances.

(j) Change in Ownership of Developer; Governing Documents. Permit no direct or indirect change, whether by operation of law or otherwise, in the legal or beneficial ownership in Developer during the term of this Agreement without prior notice to and the written consent of the Authority. Notwithstanding the foregoing, subject to the requirements of Section 4.01(*l*), a corporate reorganization or assignment of Developer's ownership to an Affiliate of Developer shall be permitted and will not constitute a violation of this covenant.

(k) Change in Ownership or Use of the Property. Permit no assignment, sale or transfer of the Property, or any change of use on the Property, without the prior written consent of the Authority, except a transfer of title to the Property to an Affiliate of Developer following completion of the Project (as evidenced by a final Certificate of Occupancy for the Project) shall be permitted, subject to the requirements of Section 4.01(*l*).

(l) Transfers.

(i) The Deed shall contain a restriction on the ability of Developer to make any Transfer (as defined herein) during the term of this Agreement without the prior written consent of the Authority, in its sole discretion. "**Transfer**" shall mean any transaction by which a Transferee obtains an interest in the Property, in this Agreement, or in Developer, including, but not limited to, by way of conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, liquidation, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors. "**Transferee**" shall mean any party to whom an interest in the Property, interest in the Developer, or rights in or under this Agreement is granted by virtue of a Transfer.

(ii) Notwithstanding the foregoing, the following Transfers are permitted: (a) certain transfers to an Affiliate of Developer as set forth in Section 4.01(j) and

Section 4.01(k); (b) a mortgage on the Property only for the purposes of financing the acquisition, development, and construction of the Project (a "**Permitted Mortgage**," and the holder of such Permitted Mortgage, a "**Permitted Mortgagee**"), and not as collateral for or related to any other project or financing; (c) utility and other development easements; and (d) leases of all or a part of the individual retail spaces or units to the ultimate tenants thereof (clauses (a) through (d) collectively, "**Permitted Transfer(s)**").

With respect to a Permitted Transfer, Developer shall, to the extent practical, provide the Authority written notice at least fifteen (15) days prior to such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the parties and any parties, individuals and/or entities comprising such parties. The Authority hereby consents to such Permitted Transfers upon receipt of notice thereof, without the necessity of further action by the Authority. In the absence of a Permitted Transfer or specific written consent by the Authority pursuant to the procedures described herein, no such sale, transfer, conveyance or assignment of the Property, Developer or this Agreement shall be deemed to relieve Developer from the obligations hereunder.

(iii) With respect to any other Transfer that is not a Permitted Transfer, Developer shall obtain the Authority's prior written consent and all applicable approvals, as may be deemed necessary by the Authority in its sole discretion. Developer shall submit written request to the Authority for consent to a proposed Transfer. The Authority shall respond to Developer's request for a Transfer in writing within thirty (30) days of the Authority's receipt of such request. If the Authority does not deliver a written response to the Developer's request within such thirty (30) day period, then Developer may deliver a second written request to the Authority for consent to the Transfer, and the Authority shall be deemed to have consented to such request Transfer if the Authority does not deliver a written response to the Developer within thirty (30) days after the Authority receives the Developer's second request. Any Transfer in violation of this subsection shall constitute a Developer Event of Default and shall be null and void ab initio. Such Developer Event of Default shall entitle the Authority to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including exercise of the Authority's Right of Reverter as set forth in greater detail in Section 5.04 herein.

(m) Insurance; Condemnation.

(i) Developer shall keep the Property, the Project, fixtures, equipment and other items of personal property insured against such perils and hazards, and in such amounts and with such limits, as set forth below, and in any event will continuously cause to maintain with responsible insurers, at no cost to the Authority, the following described policies of insurance (collectively, the "**Insurance Policies**"), with such variations as shall reasonably be required to conform to customary insurance practice:

1. During any period of construction, assembly, repair or restoration, "All Risk" Builder's Risk insurance policy for the Project on which the work is to be executed or which is to be constructed, for the full completed value of the Project, which shall also cover material, equipment, and supplies of all kinds incident to the Project, in temporary structures, in vehicles, or in the open.

2. All Risk fire and extended coverage hazard insurance (together with vandalism and malicious mischief endorsements) in a minimum aggregate amount of the construction cost of the Project covering insurance risks covered by a standard extended coverage insurance policy, and covering such other risks as are commonly insured against by commercial property owners for items that are similar to those described above that are located in Atlantic County, New Jersey, at all times equal to the full replacement cost of the Project, including without limitation, fixtures and equipment (including any leasehold interest), and the cost of debris removal.

3. Commercial general liability insurance with respect to the Property, including death, bodily injury and broad form property damage coverage with a combined single limit in a commercially reasonable amount.

4. Workers' Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the Laws of the State.

5. Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the improvements (without exclusion for explosions or testing procedures), in a commercially reasonable amount.

6. Such other relevant policies of insurance relating to the Project's development, construction and operation with limits and overages which are acceptable to the Authority.

(ii) Each of the Insurance Policies shall have commercially reasonable deductibility limits. Developer shall be responsible for paying any deductible amount under all Insurance Policies.

(iii) Each of the Insurance Policies shall be endorsed to name the Authority and its successors and assigns as the Authority loss payee, additional insured pursuant to a standard endorsement in the form of, or substantially equivalent to, the standard Authority loss payee endorsement used in the State, provided that with respect to liability insurance or other policies of insurance required hereunder where an Authority loss payee endorsement is not available, the Authority shall, to the fullest extent available, be named as an additional insured in any such Insurance Policies. All Insurance Policies and endorsements required pursuant hereto shall be fully paid for, non-assessable and contain such provisions and expiration dates and be in such form and amounts as indicated above and shall be issued by an insurance company licensed to sell insurance in the State, and having an A.M. Best General policyholders' rating of "A-" or better. Without limiting the foregoing, each policy shall specifically provide that such policy may not be cancelled except upon thirty (30) days' prior written notice to the Authority and that no act or thing done by the insured shall invalidate the policy as against the Authority. Developer shall cause to be delivered to the Authority in a form acceptable to the Authority certificates of such policies together with such other information regarding such policy as the Authority shall reasonably require.

(iv) Within thirty (30) days of the date of any damage, destruction, loss, casualty to or taking of all or any part of the Project or the Property, and provided that casualty insurance or condemnation proceeds are made available, Developer shall promptly commence and diligently continue to perform the repairs, restoration and rebuilding of the portion of the Property and the Project so damaged, destroyed or taken so as to restore the Property and the Project in full compliance with all legal requirements and so that it shall be at least equal in value and general utility as it was prior to such damage, destruction or taking, and if such damage or destruction, in the reasonable judgment of the Authority, shall exceed Two Hundred and Fifty Thousand Dollars ($250,000) (hereinafter, collectively "**Major Work**"), Developer shall commence the Major Work and perform the Major Work diligently and in good faith.

Section 4.02 Authority Covenants. The Authority covenants and agrees with Developer that it will:

(a) Development Approvals. Diligently work and cooperate in good faith to the extent reasonably possible to take any action necessary to support Developer's pursuit of any permits, licenses and approvals from any Governmental Authorities or utility providers, as may be required for Developer's development of the Property (collectively, "**Development Approvals**"). Development Approvals shall include but not be limited to applications and approvals which may be required to permit Developer to construct and operate the Project on the Property and/or any change in zoning of the Property as determined as necessary by Developer. The Authority shall process and hear Developer's land use and site plan application promptly upon Developer's submission of same.

(b) Continuing Accuracy of Representations and Warranties. Cause all of the representations and warranties made by the Authority to Developer herein to be continuously true and correct in all material respects during the Agreement.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

Section 5.01 Developer Events of Default. Each of the following shall constitute a Developer Event of Default:

(a) if any representation or warranty of Developer made in this Agreement shall now or hereafter be materially false; or

(b) if Developer shall default in the due observance or performance of any other covenant or condition on the part of Developer in the Project Documents, and Developer shall fail to remedy such default within a commercially reasonable time, not to exceed thirty (30) days, after notice by the Authority to Developer of such default; provided, however, that if any such default cannot be cured within such thirty (30) day period, Developer shall be afforded up to an additional sixty (60) days to cure such default provided Developer shall have commenced such cure within such initial thirty (30) day period and shall thereafter diligently continue to cure such default; or

(c) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Property or the Project, or any part thereof or of Developer shall be appointed and such order shall not be discharged or dismissed within ninety (90) days after such appointment; or

(d) if Developer shall: (i) dissolve, (ii) cease to do business, or otherwise fail to continue conducting business operations, and such failure continues for thirty (30) days after receipt of written notice from the Authority of such failure, (iii) file a voluntary petition in bankruptcy for liquidation or reorganization pursuant to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "**Bankruptcy Code**"), or any similar Law, federal or state, now or hereafter in effect, (iv) make an assignment for the benefit of creditors, (v) admit in writing its inability to pay its debts as they become due or suspend payment of its obligations, (vi) consent to the appointment of a receiver, or a petition proposing the adjudication of Developer as bankrupt pursuant to the Bankruptcy Code, or any similar Law, federal or state, now or hereafter in effect, and is not the subject of an order by a court of competent jurisdiction dismissing, vacating or setting aside such petition within sixty (60) days from the filing of the petition, or if Developer shall consent to the filing of such involuntary petition or answer, or (vii) take any action in furtherance of the foregoing; or

(e) if any of the creditors of Developer shall commence against Developer an involuntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect and if such case shall not be discharged or dismissed within one hundred twenty (120) days after the date on which such case was commenced; or

(f) if Developer shall fail to perform the development of the Property in accordance with the Project Schedule set forth in ***Schedule C***, as may be amended from time to time pursuant to Section 2.04 herein; or

(g) if the Developer shall transfer ownership of Developer or the Property or shall change the use of the Property in violation of Section 4.01; or

(h) if Developer terminates, revokes or attempts to terminate, or revoke any guaranty of indebtedness, or defaults under any other agreement with the Authority.

Section 5.02 Remedies of the Authority. Upon the occurrence of a Developer Event of Default, the Authority may do one or more of the following:

(a) terminate this Agreement; and/or

(b) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Project Documents or in aid of the execution of any power herein granted, or for the enforcement of any other legal or equitable remedy or otherwise as the Authority shall elect; and/or

(c) exercise the Authority's right to enter and take possession of the Project, Property, or portion thereof (the "**Right of Reverter**") as set forth in this Article V.

Section 5.03 Notice to Permitted Mortgagees; Permitted Mortgagees' Right to Cure. To the extent that a Permitted Mortgagee has provided its contact information to the Authority and has requested to be provided with notices hereunder, the Authority shall provide such Permitted Mortgagee with a copy of any notice of default provided to the Developer, in the same manner and at the same time that such notice is provided to the Developer. Such Permitted Mortgagee shall have the right to cure Developer's default within the cure window set forth in the notice.

Section 5.04 Revesting Title in the Authority. The Authority's Right of Reverter shall be memorialized in the deed to the Property. The Authority may exercise the Right of Reverter as follows. If a Developer Event of Default occurs that cannot be cured or is not cured within the applicable time period, then, subject to any Permitted Mortgage, the Authority shall have the right at its sole and absolute option, upon sixty (60) days' written notice to Developer, in accordance with Section 6.05 hereof, and any Permitted Mortgagee, to enter and take possession of the Project and the Property. At the same time that the Authority enters onto and takes possession of the Project and the Property, Developer shall execute and deliver a deed to the Authority for the Project and the Property, subject to any Permitted Mortgage. If the Developer is the subject of a bankruptcy proceeding under the Bankruptcy Code, the Developer hereby consents to granting the Authority relief from the automatic stay pursuant to 11 U.S.C. § 362 to effectuate the transfer. Upon the occurrence of any such conveyance, this Agreement shall be deemed terminated with respect to the Project and the Property and there shall be no further rights or obligations of the Parties with respect to the Project and the Property except those rights reserved to a Permitted Mortgagee or as otherwise expressly set forth in this Article V. Any revesting of title in the Authority under this Section 5.04 shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any Permitted Mortgagee for the protection of the Permitted Mortgagee. If the Developer refuses to execute and deliver a deed to the Authority for the Project and the Property as set forth in the within paragraph, the Authority shall be entitled, in its sole discretion, to appoint the General Counsel of the Authority as the attorney-in-fact for the Developer with the power to execute a deed transferring title to the Project and the Property to the Authority.

Section 5.05 Resale of Project and Property. After the revesting in the Authority of the title to the Project and the Property as provided in Section 5.04, the Authority shall, pursuant to its responsibilities under State Law, use its best efforts to resell the Project and the Property at fair market value (subject to such Permitted Mortgage as may exist against the Project or the Property), utilizing customary/marketing and sale efforts, which shall include, but is not limited to, reissuance of a request for proposals. Such sale shall be made, as soon and in such manner as the Authority shall find feasible and consistent with the objectives of State Law, to a qualified and responsible party or parties, as determined by the Authority, who will assume the obligation(s) of completing the Project or applicable Phase or such other improvements and/or operation of the Project as shall be satisfactory to the Authority and in accordance with the uses specified for the Property, or applicable portion thereof, in this Agreement. Upon any resale of the Project and the Property, the proceeds thereof shall be applied:

(a) First, to all actual costs and expenses incurred by the Authority, including but not limited to: legal fees, salaries of personnel and related expenses incurred by the Authority in connection with the possession, management and resale of the Project and the Property; all taxes, payments in lieu of taxes, assessments, and water and sewer charges with respect to the Project and the Property or any part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Project or the Property at the time of the vesting of title thereto in the Authority or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property or any part thereof; and any amounts

otherwise owed to the Authority by Developer and its successors or transferees in accordance with the terms of this Agreement; and

(b) Second, if not discharged upon the vesting of title in the Authority, to satisfy any outstanding mortgage against the Project and/or the Property; and

(c) Any balance remaining after such reimbursements shall be retained by the Authority as its property.

Section 5.06 Authority Events of Default. Each of the following shall constitute an Authority Event of Default:

(a) if any representation or warranty of the Authority made in this Agreement shall now or hereafter be materially false; or

(b) if the Authority shall default in the due observance or performance of any other covenant or condition on the part of the Authority in the Project Documents, and the Authority shall fail to remedy such default within a commercially reasonable time, not to exceed thirty (30) days, after notice by Developer to the Authority of such default, provided, however, that if any such default cannot be cured within such thirty (30) day period, the Authority shall be afforded up to an additional thirty (30) days to cure such default provided the Authority shall have commenced such cure within such initial thirty (30) day period and shall thereafter diligently continue to cure such default.

Section 5.07 Remedies of Developer and the Authority. Upon the occurrence of an Event of Default, the other Party may take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Project Documents or in aid of the execution of any power herein granted, or for the enforcement of any other legal or equitable remedy or otherwise as said Party shall elect.

Section 5.08 Force Majeure. In the event of the occurrence of any Force Majeure Event, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the delay resulting directly from the Force Majeure Event (including any time reasonably required to recommence performance due to such enforced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreement; and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affected Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing Party or Parties when such course is, in the judgment of the affected Party, unfavorable to the affected Party. Notwithstanding the above, neither Party may not rely on its own acts or omissions as grounds for delay in its performance, and the absence of immediately available funds shall not be grounds for delay.

ARTICLE VI
GENERAL CONDITIONS AND PROVISIONS

Section 6.01 Taxes. The Project, once constructed, is expected to generate annual tax revenue for the City, or, if applicable, such other amounts as may be determined in the event Developer applies for and negotiates a financial agreement with the City. Developer shall be responsible for paying all property taxes due on the Property immediately upon Developer's acquisition of the Property.

Section 6.02 No Third-Party Beneficiaries. Except as otherwise set forth herein, this Agreement is solely for the benefit of the Authority and Developer.

Section 6.03 New Jersey Business Registration Act Requirements.

(a) Developer acknowledges the requirements of P.L. 2001, c. 134, Sections 1 through 4, as amended by P.L. 2004, c. 57, Section 3, effective June 29, 2004, codified at *N.J.S.A.* 52:32-44, *et seq.* (the "Business Registration Act"); and that such Act and its requirements are applicable to Developer in connection with the Project. In addition, Developer agrees to comply with all applicable provisions of the Business Registration Act. That Business Registration Act generally requires that proof of "business registration" with the State Department of Treasury, Division of Revenue be provided by any "contractor" and/or "subcontractor" in connection with any contract to (1) provide goods or services to, or (2) construct a construction project with any State agency that is a "contracting agency" (as such terms are defined in *N.J.S.A.* 52:32-44a, including the Authority).

(b) Developer acknowledges and represents to the Authority that Developer, as a "contractor" with the Authority in connection with the Project, has previously provided true copy of its valid "business registration" to the Authority in accordance with the requirements of the Business Registration Act.

(c) Developer understands and agrees that Developer shall not enter into any contract with any "subcontractor" as defined in the Act unless such "subcontractor" first provides proof of valid business registration to Developer, as applicable, in accordance with the Business Registration Act. Moreover, upon receipt of such business registration, Developer, in turn, shall forward it to the Authority, as the contracting agency. The requirement of proof of business registration extends down through any and all levels or tiers of the Project and applies to each construction contract, subcontract, or sub-subcontract for the Project.

(d) Developer shall provide written notice to any and all of its suppliers and "subcontractors" (as defined in *N.J.S.A.* 52:32-44a) of their responsibility to submit proof of business registration to Developer, as applicable, under such Act and such notification shall be included in any contract entered into by Developer with such suppliers or subcontractors.

(e) Developer shall upon request, at all times during the course of its performance of its obligations under this Agreement, maintain and submit to the Authority an accurate and up to date list of all subcontractors and their addresses. The list shall be accompanied with proof of business registration of each subcontractor or supplier used in connection with the performance or fulfillment of the Project and shall be promptly updated with any changes or

additions that may occur from time to time as applicable. If no subcontractors are being used or have been used, at any time, during the course of Developer's performance of the Project, Developer shall attest to such fact to the Authority in writing on such forms as the Authority may reasonably require.

(f) In accordance with *N.J.S.A.* 52:32-44g, Developer shall cause each subcontractor and each of their "affiliates" as defined in such section of the Business Registration Act, to collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax payment pursuant to the "Sales and Use Tax Act, P.L. 1966," c. 30 (C.54:32B-1, *et seq.*) on all their sales of tangible personal property delivered into the State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

Section 6.04 Documentation Satisfactory. All documentation and proceedings deemed by the Authority or the Authority's counsel to be necessary or required in connection herewith and the documents relating hereto shall be subject to the prior approval of, and satisfactory to, the Authority or the Authority's counsel as to form and substance. In addition, the persons or parties responsible for the execution and delivery of, and signatories to, all documentation required by this Agreement shall be acceptable to, and subject to the approval of, the Authority or the Authority's counsel. The Authority or the Authority's counsel shall receive copies, certified if requested by either of them, of all documents which they may require in connection with the transactions contemplated hereby.

Section 6.05 Notices. Except as expressly provided otherwise, all notices, demands, consents, approvals and statements required or permitted hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, three (3) days after mailing by registered or certified mail, postage prepaid, or one (1) day after delivery to a nationally recognized overnight courier service providing evidence of the date of delivery:

(a) In the case of the Developer, notice shall be addressed to:

Douglas Development Corporation
Attn: Douglas Jemal
655 New York Avenue, NW Suite 830
Washington, DC 20001
Email: DJemal@douglasdev.com

with a copy to:

Potkin, Williamowsky & Pillay, PLLC
Attn: Lane H. Potkin, Esq.
4725 Wisconsin Ave., N.W., Suite 250
Washington, DC 20016
Email: Potkin@lplawdc.com

Sweet & Bennett, LLC
Attn: Jamie M. Bennett, Esq.
37 Court Street
Freehold, New Jersey 07728
Email: jamie@sweetbennett.com

(b) In the case of the Authority, notice shall be addressed to:

Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, New Jersey 08401

with a copy to:

McManimon Scotland & Baumann, LLC
Attn: Joseph P. Baumann, Esq.
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Email: jbaumann@msbnj.com

Casino Reinvestment Development Authority
Attn: Mónica de los Ríos, Esq., General Counsel
15 South Pennsylvania Avenue
Atlantic City, New Jersey 08401
Email: MdelosRios@NJCRDA.com

Notice hereunder may be provided at such other address which a Party shall have notified the other Party giving such notice in writing in accordance with the foregoing requirements.

Section 6.06 Entire Agreement, Amendments and Waivers. This Agreement and the other Project Documents contain the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. None of the terms and provisions hereof or of the other Project Documents may be changed, waived, discharged or terminated, nor may any material departure from the provisions hereof or thereof be consented to, except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, termination or consent is sought. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Without limiting the foregoing, acceptance by the Authority of any sum required to be paid pursuant hereto or any other Project Document after its due date, or in an amount less than the sum then due, shall not constitute a waiver by the Authority of its right to require prompt payment when due of all other such sums or to declare a Default or to exercise such other rights provided herein or in the other Project Documents for such late or reduced payment.

Section 6.07 Successors and Assigns. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Developer and the Authority, and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Developer,

without the prior written consent of the Authority in each instance, may not assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof.

Section 6.08 Severability. The provisions hereof are intended to be severable. Any provisions hereof, or the application thereof to any person, entity or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (or the remaining portions of such provision) or the application thereof to any other person, entity or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any person, entity or circumstance in any other jurisdiction.

Section 6.09 Non-Waiver, Remedies Cumulative. No failure or delay on either the Authority's or Developer's part in exercising any right, remedy, power or privilege (hereinafter in this Section, each a "**Remedy**") hereunder or under any of the other Project Documents shall operate as a waiver of any such Remedy or shall be deemed to constitute the Authority's or Developer's acquiescence in any default by either the Authority or Developer, as applicable, under any of said documents. A waiver by the Authority or Developer of any Remedy hereunder or under any of the other Project Documents on any one occasion shall not be construed as a bar to any other or future exercise thereof or of any other Remedy by such Party. The Remedies provided in said documents are cumulative, may be exercised singly or concurrently and are not exclusive of any Remedies provided therein or by Law.

Section 6.10 Expenses; Indemnification. Developer agrees to indemnify the Authority and its directors, officers, employees and agents from, and hold each of them harmless against, (a) any and all losses arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Developer of the Project, including, without limitation, the reasonable fees and disbursements of counsel actually incurred in connection with any such investigation, litigation or other proceedings; and (b) any and all claims, actions, suits, proceedings, costs, expenses, losses, damages and liabilities of any kind, including in tort, penalties and interest, arising out of or by reason of any matter relating, directly or indirectly, to the ownership, condition, development, construction, sale, rental or financing of the Property or the Project, or any part thereof (but excluding any such losses, liabilities, claims, damages or expenses incurred solely as a result of the gross negligence or willful misconduct of the Authority). In amplification, and not limitation, of the foregoing, the Developer agrees to indemnify, defend and hold harmless the Authority against, and the Developer shall pay, any and all claims, actions, suits, proceedings, costs, expenses, losses, damages and liabilities of any kind which the Authority may sustain, be subject to or be caused to incur by reason of any claim, suit or action arising out of or in connection with the presence of Hazardous Materials on, beneath or migrating from the Property, any action or failure to act of the Authority or Developer with respect to the conduct or performance of the Authority's or Developer's remediation of the Property based upon the current or former environmental condition of the Property. In addition, Developer hereby agrees to forever discharge, waive and release any and all environmental claims against the Authority with respect to the presence of Hazardous Materials on, beneath or migrating from the Property.

Section 6.11 Governing Law; Jurisdiction. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the Laws of the State of New Jersey (without giving effect to the State's principles of conflicts of law). The Parties hereby irrevocably submit to the nonexclusive jurisdiction of any State court sitting in the City of Atlantic City, County of Atlantic, over any suit, action or proceeding arising out of or relating to this Agreement, and the Parties hereby agree and consent that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any such court shall be at the address to which notices under this Agreement are to be provided to each Party, and service so made shall be complete five (5) days after the same shall have been so mailed.

Section 6.12 WAIVER OF TRIAL BY JURY. DEVELOPER AND THE AUTHORITY EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY DEVELOPER AND THE AUTHORITY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 6.13 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 6.14 Relationship. Under no circumstances shall the relationship between the Authority and Developer be construed as creating a partnership or joint venture.

Section 6.15 Brokers. Each of Developer and the Authority represents and warrants to the other that it has not dealt with any broker in connection with this Agreement and that, to their respective knowledge and belief, no broker, finder or like entity procured or negotiated this Agreement or is entitled to any fee or commission in connection with this Agreement.

Section 6.16 Recording of this Agreement. The Authority shall record this Agreement, without Exhibits, in the Atlantic County Clerk's Office and submit a fully executed recorded copy to the Developer or to the Developer's attorney. All recording costs shall be borne by the Developer. Upon the expiration of two (2) years following the issuance of a Certificate of Occupancy for the Project, the Authority agrees to provide Developer with a release of this Agreement in a form suitable for recording with the Atlantic County Clerk.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and on its behalf by its Board of Directors, and its seal to be hereunto duly affixed and attested, and the Developer has caused this Agreement to be duly executed in its name and on its behalf by its Authorized Signatory, on or as of the Day first above written.

ATTEST:

CASINO REINVESTMENT DEVELOPMENT AUTHORITY, an authority created by the State of New Jersey

By: _____
Name:

By: _____
Name: Sean Pattwell
Executive Director

STATE OF NEW JERSEY)
) **SS:**
COUNTY OF ATLANTIC)

BE IT REMEMBERED, that on _____, 2022, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Sean Pattwell, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Executive Director of **CASINO REINVESTMENT DEVELOPMENT AUTHORITY**, an authority created by the State of New Jersey, and the body corporate and politic named in the within instrument; that the execution, as well as the making of this instrument, has been duly authorized by a proper resolution of the Board of Directors of the body corporate and politic; that deponent well knows the seal of the body corporate and politic; and that the seal affixed to said instrument (if affixed) is the proper corporate seal and was thereto affixed and said instrument signed and delivered by Sean Pattwell, the Executive Director, as and for the voluntary act and deed of said body corporate and politic, in presence, who thereupon subscribed his name thereto as attesting witness.

Sworn and subscribed to before me
this ____Day of _____, 2022

_____
Notary Public of the State of NJ
My Commission Expires _____

WITNESS:

By: _____
Name: JACK BROWNELL

DOUGLAS DEVELOPMENT CORPORATION,
a District of Columbia corporation, Developer

By: _____
Name: DOUGLAS JEMAL
Title: Authorized Signatory

~~**STATE OF** _____~~)
) **SS:**
~~**COUNTY OF** _____~~) District of Columbia

BE IT REMEMBERED, that on September, 8th, 2022, before me, the subscriber, a Notary Public of ~~the State of~~ District of Columbia, personally appeared Douglas Jemal, who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that s/he is an Authorized Signatory of **DOUGLAS DEVELOPMENT CORPORATION**, a corporation of ~~the State of~~ District of Columbia, the entity named in the within Instrument and that s/he signed, sealed and delivered the attached document as and for his/her act and deed and as the authorized act and deed of **DOUGLAS DEVELOPMENT CORPORATION**.

Sworn and subscribed to before me
this 8th Day of September, 2022

_____
Notary Public of ~~the State of~~ District of Columbia
My Commission Expires 5/31/2027

SCHEDULE A
DESCRIPTION OF LAND; AERIAL MAP

See attached.