

Prepared By: Joseph A, Del Duca, Esquire /'

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT AND REIMBURSEMENT AGREEMENT made on the day of _____, 2003, by and between the **TOWNSHIP OF BARNEGAT**, a municipal corporation of the State of New Jersey, with offices located at 900 W. Bay Avenue, Barnegat, New Jersey 08005, ("Barnegat") and **MARK MADISON, LLC**, a Limited Liability Company organized under the laws of the State of New Jersey, with offices located at 500 Barnegat Boulevard, North, Suite 402, Barnegat, New Jersey 08005, (the "Developer").

WITNESSETH:

WHEREAS, the Developer is engaged in the business of developing residential real estate; and

WHEREAS, the Developer or its affiliates either own or are under binding agreement to purchase approximately 500 single-family homes on the building lots located in that portion of Barnegat Township known as "Ocean Acres";

WHEREAS, on or about October 31, 1973, approximately 2,000 single-family building lots were created when the following subdivision plats were filed as maps I-285 in Ocean County:

Plan of Lots Ocean Acres Inc. Section 19
Plan of Lots Ocean Acres Inc. Section 20
Plan of Lots Ocean Acres Inc. Section 21
Plan of Lots Ocean Acres Inc. Section 22
Plan of Lots Ocean Acres Inc. Section 23
Plan of Lots Ocean Acres Inc. Section 24
Plan of Lots Ocean Acres Inc. Section 25
Plan of Lots Ocean Acres Inc. Section 26
Plan of Lots Ocean Acres Inc. Section 27
Plan of Lots Ocean Acres Inc. Section 28
Plan of Lots Ocean Acres Inc. Section 29

(the "Maps"); and

WHEREAS, the lots identified on the Maps are hereinafter referred to as a "Lot" or the "Lots"; and,

WHEREAS, the Maps were filed by Ocean Acres, Inc., the original developer of the Ocean Acres Project; and,

WHEREAS, the single-family lots created by the Maps were all (or substantially all) conveyed at various times to various individuals and entities; and,

WHEREAS, the road beds and other open space, as more particularly described on the Maps (hereinafter collectively the "Road Beds") were offered for public dedication at the time the Maps were filed; and,

WHEREAS, the Barnegat section of Ocean Acres has experienced very limited development due to the absence of certain critical infrastructure including but not limited to sanitary sewer and water facilities; and,

WHEREAS, the Developer proposes, over a period of years, on a phase by phase basis, to install and construct, at its expense, the various infrastructure necessary to accommodate the construction of single-family homes on the buildable Lots located in the Barnegat section of Ocean Acres; and,

WHEREAS, the parties recognize that certain of the Lots may be unbuildable due to environmental and other constraints affecting them; and,

WHEREAS, the Developer is in the process of obtaining any and all governmental approvals necessary to install and construct the infrastructure necessary to develop single-family homes in the Barnegat section of Ocean Acres; and,

WHEREAS, Barnegat and the Developer were involved in litigation relative to the availability of sanitary sewer capacity necessary for the development of the Ocean Acres section of Barnegat Township entitled "Mark Madison, LLC v. Township of Barnegat, et al.", Superior Court of New Jersey, Law Division, Ocean County, bearing Docket No. OCN-L-3811-01 (the "Litigation"); and,

WHEREAS, Madison does not own or control either directly or indirectly, through its affiliates, all of the buildable Lots located in the Ocean Acres section of Barnegat Township; and,

WHEREAS, various individuals and entities own Lots in the Ocean Acres section of Barnegat Township other than the Developer and entities affiliated with the Developer (hereinafter referred to as the "Independent Lot Owners"); and,

WHEREAS, those Lots owned by the Independent Lot Owners and not now or hereafter owned by the Developer or its affiliates are hereinafter referred to as the "Independent Lots";

WHEREAS, the infrastructure and improvements to be installed and constructed by the Developer will enable the Independent Lot Owners to construct single-family homes on the Independent Lots (to the extent that such Independent Lots are not otherwise constrained from development); and,

WHEREAS, the Developer has agreed to permit the Independent Lot Owners to utilize such infrastructure and improvements in order to accommodate the development of single-family homes on the Independent Lots provided that such Independent Lot Owners reimburse the Developer for the pro rata share of any and all costs (as more particularly described hereinafter) incurred by the Developer in connection with the installation of such infrastructure and improvements; and,

WHEREAS, the aforementioned infrastructure and improvements and the resulting development of the Ocean Acres section of Barnegat Township will have a substantial impact upon the Township; and,

WHEREAS, it is in the best interest of the Township, as well as the Independent Lot Owners and the Developer to establish guidelines and procedures governing the construction and installation of the proposed improvements and infrastructure and the manner in which the Developer will be reimbursed therefore; and,

WHEREAS, on July 26, 2002 an Order for Judgment was entered in the Litigation (the "Order"), which Order imposes certain rights, duties and obligations on both the Developer and Barnegat, including but not limited to the requirement that a developer's agreement be executed by and between the Developer and the Township related to the installation of the infrastructure and improvements described herein and the pro rata reimbursement due to the Developer from those third parties benefiting from such infrastructure and improvements; and,

WHEREAS, parties have agreed to execute this Developer's Agreement subject to the terms and conditions set forth herein.

NOW THEREFORE, in accordance with the requirements of the Order, consideration of the mutual promises contained herein and for other good and valuable consideration, receipt of which is mutually acknowledged, the parties do hereby agree as follows:

1. AGREEMENT

1.1 Subject to the terms and conditions contained in the Agreement, the Developer shall construct in and upon the Road Beds in the Ocean Acres section of Barnegat Township that infrastructure and those improvements necessary to support the construction of, and thereafter service, single-family residential homes on some or all of the Lots, which infrastructure and improvements include but are not necessarily limited to road paving, curbing, water facilities, sanitary sewer facilities, storm water facilities, soil erosion control measures, street lights, street signs, traffic control signs, grading, electric lines, telephone

lines, cable television lines, and natural gas lines (the "Improvements") as generally described on the "Infrastructure Designed Report and Appendices and Cost Estimate for Ocean Acres Recapture Agreement" dated November 22, 2002, prepared by Speitel and Speitel, incorporated by reference into Agreement (hereinafter the "Plans").

2. APPROVALS

2.1 It shall be the Developer's obligation to obtain any and all local, county, state and other governmental approvals necessary to install the Improvements, as generally described on the Plans, and this Agreement shall not be construed to grant such governmental approvals. The parties hereby reaffirm the determination reached during the Litigation as to those governmental approvals that are necessary to permit the construction and installation of the Improvements, and which governmental approvals are reflected on Exhibit A. It shall be the Developer's, and its affiliates, obligation to obtain any and all local, county, state and federal governmental approvals necessary to construct single-family homes on any of the Lots owned by the Developer or its affiliates. Other than the governmental approvals associated with the Improvements, it shall be the obligation of the Independent Lot Owners to obtain any local, county, state and federal governmental approvals necessary to construct single-family homes on any of the Independent Lots owned by the Independent Lot Owners, and which governmental approvals include but are not necessarily limited to (i) an individual building permit for each Lot; (ii) the posting of a performance guaranty and inspection escrow associated with grading and any other applicable work completed inside the boundaries of a Lot; (iii) local, county, and state sanitary sewer approvals as may be necessary to install a sanitary sewer lateral from a single family home on a Lot to a service lateral stub constructed by the Developer to the right of way line as part of the Improvements; (iv) local, county, and state water approvals as may be necessary to install a water lateral from a single family home on a Lot to a water service stub constructed by the Developer to the right of way line as part of the Improvements; (v) payment of applicable water and sanitary sewer connection fees; (vi) Ocean County Soil Conservation District approval as may be necessary for all work inside the boundary of a Lot; and (vii) a certificate of filing and other necessary approvals from the Pinelands Commission for the construction of a single-family home on a Lot. It shall also be the responsibility of the Owner of each Lot (whether the Developer or its Affiliates or the Independent Lot Owners) pay the following impact fees to Barnegat Township in such amounts and under such terms as are required by the LDO: (i) recreation fee; (ii) any inclusionary zoning fee (one-half of which will be paid at the issuance of a building permit and one half of which will be paid at the time of a certificate of occupancy) and (iii) the storm water assessment fee.

3. IMPROVEMENTS

3.1 In connection with obtaining the necessary governmental approvals to construct the Improvements, the Developer has and will continue to prepare engineering plans and drawings. Those engineering plans and drawings, after they have been approved by the applicable governmental agency, will be submitted to the municipal engineer and/or

the water and sewer engineer, as applicable, for Barnegat Township (collectively the "Municipal Engineer") and shall thereafter be incorporated into and made a part of this Agreement. (the "Approved Plans") Thereafter the Developer shall construct the Improvements in accordance with the Approved Plans.

3.2 The parties acknowledge that the Order specifically, and subject to certain terms and conditions, requires the Developer to obtain all necessary governmental approvals for and then construct certain of the Improvements, which Improvements include but are not necessarily limited to (i) the construction of a new force main from the west side of the Garden State Parkway to the Barnegat Boulevard Gravity Sanitary System more particularly described in paragraph 10 of the Order; (ii) the construction of the Barnegat Boulevard interceptor sanitary sewer from West Bay Avenue to the existing phase one interceptor located north of Rose Hill Road, as more particularly described in paragraph 12 of the Order; and, (iii) the implementation of certain repairs to the Barnegat Boulevard/South gravity sewer infrastructure servicing the Settlers Landing Housing Project as more particularly described in paragraph 8 of the Order (the "Ordered Improvements"). The Developer will obtain all necessary governmental approvals for and then construct the Ordered Improvements in accordance with the terms and conditions set forth in the Order and this Agreement.

3.3 The parties acknowledge that in order to avoid unnecessary and duplicative costs, certain lot improvements necessary to obtain a Certificate of Occupancy for a single-family home, should be completed in connection with the construction of that home and not in connection with the installation and construction of the overall Improvements by the Developer. Consequently, and notwithstanding anything to the contrary, the following improvements shall be completed by the owner of any Lot seeking to construct a single-family home thereon (whether the Developer or its affiliates or the Independent Lot Owners): (i) concrete sidewalk, if required, across the length and frontage of each Lot in accordance with Township standards; (ii) lot grading within the boundaries of each Lot in accordance with the overall Grading Plan (as hereinafter defined) to be included as part of the Approved Plans; (iii) concrete driveway aprons and (iv) all street trees and other landscaping reflected on the Approved Plans in the public right of way immediately adjacent to that particular Lot (collectively the "Lot Improvements"). The Lot Improvements shall be completed prior to the issuance of a certificate of occupancy for any single-family home on a Lot. The Lot Improvements shall be constructed and installed in accordance with Township standards and all other applicable local, county, state and federal laws, statutes, rules, regulations, and ordinances.

3.3.1 In order to assure consistent grading and soil conservation measures, the Developer will prepare, as part of the Approved Plans, a grading plan (the "Grading Plan") for each Phase of the Improvements it constructs and installs. The Grading Plan shall be subject to the review and approval of the Municipal Engineer and the Township Committee as well as any and all other governmental agencies having jurisdiction, including but not limited to the Ocean County Soil Conservation District. The Developer will be responsible to install all the Improvements and to

grade the Road Beds in accordance with the Grading Plan. The owner of each Lot shall have the obligation, as part of the Lot Improvements, to grade each Lot and install sidewalk in accordance with the Grading Plan and provide appropriate storm water management systems in accordance with the Grading Plan and as reviewed and approved in accordance with the MLUL and the LDO to accommodate increased storm runoff generated by the Lot Improvements. Prior to the issuance of a Certificate of Occupancy, the Municipal Engineer shall inspect the final grading and storm water management system installed on each Lot and shall certify compliance with the Grading Plan and other approved plans.

3.4 Except as otherwise set forth herein the Developer will maintain the Improvements until accepted for dedication by the Township. Notwithstanding the above, the Township shall not be responsible to plow the snow from any streets until after the top course of paving has been installed. It shall also be the Township's obligation to assume the obligation for the payment of street lighting as required by NJSA 40:55D-53.6.

3.5 The Improvements shall, at all times, be installed and constructed in accordance with all local, county, state and federal laws, statutes, regulations and ordinances. The Improvements shall be installed in a good and workmanlike fashion. The Developer, its successors and assigns, agree to indemnify and hold the Township, its elected officials, employees, professionals, agents, servants, successors and assigns, harmless from and against, any and all claims, actions, liability, and expenses in connection with injury or loss of life to person or damage to property arising from the Developer's performance of its obligations under this Agreement; provided that, such indemnification shall not apply to the negligence or intentional misconduct of the Township, its agents, servants, contractors, employees or representatives.

4. **PHASING**

4.1 The parties understand and agree that the Developer intends to construct the Improvements over a number of years and in various sections or phases, each of which is hereinafter referred to as a "Phase". It shall be the Developer's obligation to obtain any and all local, county, state and federal governmental approvals that may be required to permit the construction of each Phase of the Improvements, which approvals include but are not limited to those required under the Municipal Land Use Law, N.J.S.A. 40:44D-1, et seq. (the "MLUL") and the Land Development Ordinance for Barnegat Township (the "LDO"). Subject to the Developer's obligation to obtain the necessary governmental approvals, the Developer shall have the right to determine (i) the location of each Phase; (ii) the boundaries of each Phase; (iii) the order in which the various Phases will be developed; and, (iv) the time at which the construction and installation of the Improvements in a particular Phase will commence.

BONDING AND INSPECTION ESCROWS

5.1 The Developer will post performance guaranties and inspection escrows for the Improvements in accordance with the LDO and Section 53 of the MLUL. The performance guaranties and the inspection escrows shall be posted prior to the commencement of construction and installation of the Improvements in any Phase. Promptly after the completion of the Improvements in each Phase, the Municipal Engineer will perform a final inspection, and subject to the limitations and requirements of the MLUL and the LDO, the performance guaranty shall be released. Prior to final acceptance and release of any performance guaranty, the Developer shall provide to the Municipal Engineer as built documents for the installed utility infrastructure. The as built documents shall be provided in both reproducible hard copy and electronic format. The electronic format shall be provided in AUTOCAD or dxf format compatible with the Municipal Engineer's CAD system. As built data shall include horizontal and vertical location of all utility structures (i.e. manholes, valves, inlets, outfall structures, etc.) and service stubs installed by the Developer as part of this Agreement. Horizontal data shall include coordinates referenced in the New Jersey Plane Coordinate System 1983 NAD (North American Datum) or current horizontal datum standard in effect at the time the as built documentation is prepared. The vertical data shall be referenced to the 1988 NAVD (North American Vertical Datum) or the current vertical datum standard in effect at the time the as built documentation is prepared.

5.2 The owner of each individual Lot (including the Developer and it affiliates or the Individual Lot Owners, respectively) shall be responsible to post any performance guaranties and inspection escrows as may be required by the MLUL, the LDO, or other applicable law to assure completion of said Lot Improvements. It is intended that no Certificate of Occupancy will be issued for any single-family home on any Lot until the Municipal Engineer has certified that the Lot Improvements have been completed in accordance with applicable requirements for that Lot.

5.3 The Developer shall be required to post a maintenance guaranty in accordance with the requirements of Section 53 of the MLsUL and the LDO. The parties acknowledge that the Independent Lot Owners have been granted free access to the streets being constructed by the Developer as part of the Improvements, and it is anticipated that the Independent Lot Owners will cut driveways into such streets. In the event that any damage to public improvements is caused by the Independent Lot Owners, it shall, nevertheless, be the Developer's responsibility to repair such damage, and the Township may draw down upon the Maintenance Guaranty accordingly. The Developer shall be entitled to reimbursement from each Independent Lot Owner for the cost of repairing any damage to public improvements required by the Township, which reimbursement shall include attorney's fees and other costs of collection.

6. THE INDEPENDENT LOTS

6.1 The parties acknowledge that the Independent Lot Owners may wish to construct single-family homes on the Independent Lots utilizing the Improvements

constructed and owned (until accepted for public dedication) by Ocean Acres, Inc. and/or the Developer. The Developer grants unto the Independent Lot Owners, their successors and assigns, the irrevocable right and license to utilize the Improvements in their entirety in connection with the development of said Independent Lots for the construction of single-family homes, including but not limited to: (i) the right to connect into all utility lines constructed and installed by the Developer and (ii) the right to ingress and egress in over and through the roads constructed by the Developer in the Ocean Acres section of Barnegat Township. The Developer acknowledges that the agreement to permit the Independent Lot Owners free and unfettered access to the Improvements is a necessary component of this Agreement. The Developer shall cause Ocean Acres, Inc. to execute such instruments as the Township may require confirming the rights granted to the Independent Lot Owners herein.

6.2 This Agreement shall not be construed to require the Developer to convey to any Independent Lot Owner the Developer's right to the 149 units of sanitary sewer capacity reserved for the Developer in accordance with the terms of the Order. It is anticipated that in order to obtain the sanitary sewer capacity necessary to permit the construction of any more than 149 single-family homes in the Barnegat Township section of Ocean Acres, it will be necessary that those sanitary sewer facilities described as part of the Ordered Improvements be completed and operational.

7. **REIMBURSEMENT**

7.1 Subject to and in accordance with the terms of this Agreement, the Developer is entitled to receive pro rata reimbursement from the Independent Lot Owners benefiting from the construction of the Improvements, and subject to the terms and conditions set forth herein, the Independent Lot Owners shall be obligated to pay such reimbursement to the Developer.

7.2 **In** accordance with the terms and conditions of this Agreement, the Developer shall be entitled to proportionate reimbursement from the Independent Lot Owners, their successors and assigns, for each and every cost and expense associated with the construction and installation of the Improvements, which costs and expenses include but are not necessarily limited to hard construction costs, application fees, permit fees, review fees, inspection fees, professional fees, performance bond fees, and maintenance costs (the "Reimbursable Expenses"). The parties each agree, in advance, that the proportionate share of Reimbursable Expenses for each Independent Lot on which a single-family home is constructed is \$34,900.00 (hereinafter the "Reimbursement Amount"). The parties have chosen to fix, in advance, a level Reimbursement Amount for all of the Independent Lots rather than calculate the Reimbursement Amount on a phase by phase basis, over time, for the following reasons: (i) all Independent Lot Owners choosing to utilize the Improvements are receiving a comparable benefit and should therefore make the same base payment; (ii) the level and fixed payment allows the Independent Lot Owners to know the Reimbursement Amount in advance of making a decision to develop or sell the Independent Lots; (iii) even if the Reimbursable Amount is determined on a phase by phase basis over time, it would still involve some estimate of costs rather than a complete and objective record of actual costs;

(iv) eliminating the administrative costs of repeatedly determining the Reimbursable Amount on a phase by phase basis will benefit the Township, the Developer, and all of the Independent Lot Owners; and (v) based on existing objective criteria the Municipal Engineer and the Township are able to reasonably calculate the Reimbursable Expenses. Except as specifically set forth in this Agreement, there shall be no adjustment or modification to the Reimbursement Amount to be paid by the Independent Lot Owners.

7.3 Notwithstanding anything to the contrary, the total number of Independent Lots for which the Developer may receive reimbursement shall be no more than 1,131 less all of those Lots owned by the Developer or its affiliates in the area shown on the Plans (except as set forth in Section 7.7 of this Agreement). Any excess reimbursement shall be paid immediately to Barnegat Township.

7.4 During the term of this Agreement, the Reimbursement Amount shall be adjusted annually on the first business day of each calendar year commencing on January 2, 2004 and on the first business day of each year thereafter until all of the applicable Reimbursement Amounts have been repaid. The annual adjustment shall be equal to the change in the Engineering News Record Construction Cost Index over the previous twelve (12) month period. For purposes of determining whether the Reimbursement Amount for a particular Independent Lot should be adjusted, the date the Developer commences work on a particular phase shall control. By way of illustration, if work on a Phase begins on November 1, 2004 then the Reimbursement Amount shall be fixed for all Independent Lots in that Phase at the figure as adjusted on January 2, 2004. The parties shall confirm any adjustment to the Reimbursement Amount, in writing, however, their failure to do so shall not preclude the Developer from its entitlement to receive the adjusted Reimbursement Amount.

7.5 No Independent Lot Owner shall have the obligation to pay the Reimbursement Amount unless and until the Independent Lot Owner seeks the issuance of a building permit to construct a single-family home on an Independent Lot. The Township shall condition the issuance of building permit for each of the Independent Lots upon payment of the Reimbursement Amount directly to the Developer, and no building permit shall be issued until the Reimbursement Amount is paid to the Developer and the Township has received a photocopy of the Release (as defined in Section 9.2) duly executed by the Developer or other written confirmation from the Developer confirming that the Reimbursement Amount has been paid. Payment shall be in cash, by certified, bank check or other readily available U.S. funds payable to the Developer.

7.6 Commencing thirty (30) days after the Improvements in a particular Phase are "Substantially Complete", and continuing for the term of this Agreement, the Developer shall be entitled to interest on the Reimbursement Amount from each Independent Lot Owner. Interest shall be at the prime rate of interest published in the Wall Street Journal on the Completion Date and shall be adjusted quarterly thereafter. If the Wall Street Journal does not publish a prime rate of interest, then the interest rate charged on the Reimbursement Amount shall be the prime rate of interest published by a publication similar to the Wall

Street Journal or published by some regional financial institution, as determined by Barnegat Township in its reasonable discretion. The Improvements in a particular Phase will be considered "Substantially Complete" when all of the Lots in that Phase have functioning water service, sanitary sewer service, gas, electric, and telephone service to the right of way line, the road has a base course of asphalt paving, and building permits for the construction of one single-family home on each of the Buildable Lots in that Phase would be available.

7.7 The parties acknowledge that the Improvements described in the Plans do not provide the necessary infrastructure to all of the Lots and that some or all of those Lots may be constrained from development due to limitations imposed by applicable environmental or other laws, statutes, rules, regulations, ordinances or other physical conditions. Those Lots not serviced by the Improvements described on the Plans are hereinafter referred to as the "Constrained Lots". This Agreement is intended to cover only those Lots that are serviced by the Improvements and not the Constrained Lots. In the event that Developer installs any additional improvements (after obtaining all necessary Governmental Approvals) to service any of the Constrained Lots, then the Township and the Developer shall amend this Agreement in order to determine an appropriate pro rata reimbursement due for such Constrained Lots, which determination shall be made in general conformity with the terms and conditions set forth in this Agreement.

8. RECORDATION

8.1 This Agreement shall be recorded with the Ocean County Clerk's office at the expense of the Developer. The Developer will direct the Ocean County Clerk to note the existence of this Agreement in the margin of the Deed to each of the Independent Lots.

8.2 Upon payment of the Reimbursement Amount by an Independent Lot Owner, the Developer shall contemporaneously deliver a release (the "Release") for each such Independent Lot, which Release shall confirm the payment of the obligations set forth herein. The Release shall be in the form attached as Exhibit B. The Independent Lot Owner for the affected Independent Lot may record the Release with the Ocean County Clerk's office at its expense.

9. WARRANTIES

9.1 Developer makes the following warranties and representations to the Township as a material inducement to the execution of this Agreement:

9.1.1 The Developer is a limited liability company duly organized, in good standing, and authorized to do business in the State of New Jersey.

9.1.2 The Developer is in the business of developing real estate and has the requisite experience and expertise to complete the Improvements in accordance with the terms of this Agreement.

9.1.3 The Developer is authorized to enter into this Agreement to carry out its obligations hereunder.

10. INSURANCE

10.1 During the term of this Agreement, the Developer shall maintain comprehensive public liability insurance coverage (which shall include worker's compensation coverage in statutory amounts) in amounts of no less than \$3 million per incident and \$3 million per occurrence. Such coverage shall name the Township as an additional insured and shall be with companies reasonably acceptable to the Township. All policies shall be in a form reasonably acceptable to the Township. Prior to the commencement of the Improvements, the Developer shall provide the Township with a copy of a paid policy or a certificate issued by the insurer certifying the existence of the coverage described herein. All insurance policies shall include a provision requiring a minimum of thirty (30) days written notice to the Township for cancellation and non-renewal.

10.2 To the extent that any loss or claim results from the performance of any parties' performance of their obligations hereunder and is covered by insurance then the parties waive their respective rights of subrogation as against each other.

11. DEFAULT

11.1 In the event that either party fails to perform its duties and obligations under this Agreement after ten (10) days written notice (provided that if the failure to perform is of such nature that it cannot reasonably be cured in ten (10) days, then there shall be no default so long as the party is making a diligent and good faith effort to correct the deficiency) then there shall be an event of default and the aggrieved party shall have any and all rights to which it is entitled at law or in equity; provided that, neither party shall have any right to cancel this Agreement. In addition, the aggrieved party shall be entitled to reimbursement for reasonable attorney's fees and other costs associated with such default, whether or not litigation is ever initiated. All such disputes shall be submitted to mandatory, binding arbitration as set forth in Section 12 below.

12. DISPUTE RESOLUTION

12.1 Any controversy or dispute arising under the terms of this Agreement shall be submitted to binding arbitration on an expedited basis to an arbitrator mutually agreeable to the parties. If the parties are unable to agree on an arbitrator they shall apply to the American Arbitration Association for the appointment of an arbitrator. The arbitration shall be conducted in accordance with the commercial rules of arbitration of the American Arbitration Association. The party prevailing in such an arbitration shall, in addition to any other remedy afforded, be entitled to reimbursement for the cost of the arbitration, including but not limited to reasonable counsel fees. Either party shall have the right to enforce any arbitration award in accordance with the terms of N.J.S.A. 2A:24-1, et seq. Either party shall

have the right to seek immediate injunctive relief in a court of competent jurisdiction notwithstanding the provisions set forth above.

13. NOTICES

13.1 Any and all notices required pursuant to the terms of this Agreement shall be sent to the following:

As to Township:	Barnegat Township 900 West Bay Avenue Barnegat, New Jersey 08005 Attention: Veronica Jasina, Township Clerk
Copy to:	Current Municipal Attorney for Barnegat Township at the address listed in the New Jersey Lawyers Diary
As to Developer:	Mark Madison, LLC 0o Walters Development Co. 500 Barnegat Boulevard North Barnegat, New Jersey 08005 Attention: Timothy Regan
Copy to:	Joseph A. Del Duca, Esquire Madden, Madden & Del Duca 108 Kings Highway East, Suite 200 P.O. Box 210 Haddonfield, New Jersey 08033

13.2 All notices, demands or communications required in accordance with the terms of this Agreement, shall be sent by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. Notice shall be effective upon sending. The notices shall be sent to the addresses set forth above unless otherwise designated, in writing, by the parties.

14. ASSIGNMENT

14.1 The Developer shall have the right to assign its rights, duties and obligations under this Agreement to a succeeding developer with the Township's written consent which shall not be unreasonably withheld, conditioned or denied. In the event of such assignment, the succeeding developer must post a substitute performance guaranty in a form acceptable to the Township. The obligations of the Developer hereunder shall be binding on all successors and assigns and shall run with the land.

15. TERM

15.1 The term of this Agreement shall commence upon its execution and shall continue until the earlier of (i) twenty (20) years or (ii) the date on which the Developer has received reimbursement from the Independent Lot Owners for 1,131 Lots less all of those lots owned by Developer or its affiliates as shown on the Plans.

16. THIRD PARTY IMPROVEMENTS

16.1 By executing this Agreement, the Township is taking no position concerning the potential right of third party developers to construct improvements in the Road Beds, and this Agreement is not intended to prohibit such third party developers from asserting their rights under applicable law. The Developer, by executing this Agreement, does not acknowledge that third party developers have a right to construct improvements in the Road Beds. The parties acknowledge that the Township has the right, but not the obligation, to make public improvements in the Road Beds.

17. GOVERNING LAW

17.1 The terms and conditions of this Agreement shall be governed and construed in accordance with the laws of the State of New Jersey. The parties shall execute a memorandum describing the terms of this Agreement in a form reasonably satisfactory to counsel for Buyer and Seller. The memorandum may be recorded at Buyer's option pending a closing in this matter.

18. HEADINGS

18.1 The article headings contained in this Agreement are for reference only and for the convenience of the parties. They shall not be deemed to constitute a part of this Agreement nor shall they alter, modify or supersede the contents of any of the provisions themselves.

19. SEVERABILITY

19.1 If any of the provisions of this Agreement are deemed invalid, void or illegal, then the provisions so affected shall be deleted from this Agreement. All remaining provisions shall remain in full force and effect.

20. FURTHER ASSURANCE

20.1 Buyer and Seller agree that each will take any and all action including but not limited to the execution of any documentation which may be necessary to effectuate the intent of the parties as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Development and Reimbursement Agreement on the day and year first above written.

BARNEGAT TOWNSHIP

By: Joseph E. Vell

MARK MADISON, LLC

By: Edward Walters, Jr. *Edward Walters, Jr.*
Edward Walters, Jr., Member

By: _____

**ADDENDUM TO DEVELOPMENT AND REIMBURSEMENT AGREEMENT
BY AND BETWEEN THE TOWNSHIP OF BARNEGAT
AND MARK MADISON, LLC**

WHEREAS, the Township of Barnegat (the "Township") and Mark Madison, LLC (the "Developer") have agreed to enter into and have executed a Development and Reimbursement Agreement (the "Agreement") which Agreement details the improvements to be installed by the Developer in the Ocean Acres section of Barnegat Township, and the manner in which the Developer will, from time to time, be reimbursed by independent lot owners, under the circumstances and terms as set forth in the Agreement; and

WHEREAS, the Township and the Developer have reviewed the Agreement and believe certain modifications are necessary:

NOW, **THEREFORE, BE IT AGREED** by and between the Township of Barnegat and Mark Madison, LLC, in consideration of the mutual promises contained herein and for other good and valuable consideration, receipt of which is mutually acknowledged, the parties agree as follows:

1. Other than as specifically modified herein all terms and conditions of the aforementioned Agreement dated M a r c h e , 2003 will remain in full and effect.

2. Section 5 of the Agreement is amended to add a Section 5.3.1 as follows:

The Developer shall pay any and all professional fees, including but not necessarily limited to counsel fees and engineering fees, incurred by the Township in connection with (i) the preparation and review of this Agreement; (ii) all of Developer's (or its affiliates) applications for land use approvals in accordance with this Agreement; (iii) the inspection of all improvements made by the Developer in accordance with this Agreement; and, (iv) such other fees as may be required by Section 53 of the MLUL and the

LDO. The Township may require escrow payments from time to time, in accordance with the requirements of

Section 53 of the MLUL and such payments shall be made to the Township's professionals in accordance with Section 53 of the MLUL. Notwithstanding anything to the contrary, the Developer acknowledges that the Township has currently incurred legal fees of approximately \$18,000.00, and immediately upon execution of this Agreement, Developer agrees to pay into escrow the additional sum of \$20,000.00 to be utilized toward the payment of current and future professional expenses incurred by the Township.

3. The following Section 7.2.1 is added to the Agreement:

While the parties agree that the Reimbursement Amount is set initially at \$34,900.00 per Lot, the Developer agrees to provide a full and complete accounting to the Township in order to verify that the cost incurred in accordance with the Plans referenced in Section 1.1 of this Agreement. Such accounting shall be submitted by the Developer within thirty (30) days after the performance guaranty for each Phase is released (and shall include a reasonable estimate of repair and other costs that will be incurred between the date the performance guaranty is released and the date the maintenance guaranty is released). It is acknowledged between parties that the cost verification to be provided by the Developer to the Township on phase by phase basis may, when reviewing a particular phase of the development, not equate to the \$34,900.00 because some of the costs are incurred at different time periods during the construction of the entire Project. However, the parties shall review the documented costs provided by the Developer to confirm that the cost estimate set forth in the plans is in accordance with the true costs incurred by the Developer. In the event of a substantial variable, the Township reserves the right to seek a modification of the Reimbursement Amount. If the Township fails to exercise such right for a period of thirty (30) days, with time being expressly of the essence, then that party will have waived its right to do so. In no event, however, shall the Reimbursement Amount exceed the amount set, at the appropriate time in accordance in paragraph 4 herein. It is the intent and understanding of the parties that the verification of the costs will not in and of itself result in any increase of the Reimbursement Amount.

4. Sections 7.4 and 7.6 of the Agreement are hereby deleted and in their place shall

be the following:

In order to reasonably compensate the Developer for the true cost of the expenses incurred, the amount due and owing to the Developer from each of the Independent Lot Owners, which is initially set as \$34,900.00, shall be modified on an annual basis to reflect the true value of the United States dollar. Subject to the limitations set forth below, commencing on January 3, 2005 and on the first business day of each year thereafter the Reimbursement Amount shall be adjusted in a percentage equal to the Consumer Price Index applicable to the Ocean County Region (the "CPI"). Developer agrees, (subject to possible adjustment to the Reimbursement Amount after cost verification as described in Section 7.2.1 of this Agreement), to limit the annual CPI increases to a maximum of (i) seven annual increases applicable to any Independent Lot prior to the completion of a Phase of the Project and (ii) a maximum of seven annual increases applicable to any Independent Lot after the completion of those improvements necessary to issue a building permit; provided that, in no event shall there be more than one annual CPI increase applicable to any Lot. By way of illustration, if a Phase of the Project is completed in 2006 and one of the Independent Lot Owners chooses not to obtain a building permit until the year 2016, then such Independent Lot Owner would pay annual CPI increases for the years 2005 through 2013, inclusive. A building permit for an Independent Lot shall not be available until the base course of paving and such other infrastructure necessary to service a single family home on that Independent Lot are completed. In the event that the CPI is no longer published or otherwise available, then the Township and the Developer shall agree upon a similar index, and if they are unable to do so, then an index shall be determined through the binding arbitration process described in Section 12.4 of this Agreement. The parties agree to confirm the adjustment to the Reimbursement Amount, in writing, each year; provided that, the failure to do so shall not preclude the Developer from its entitlement to receive the adjusted Reimbursement Amount.

- 5. Section 15.1 should be eliminated and replaced with the following:

TERM OF ENFORCEMENT

The Township's obligation to enforce the terms of this Agreement and any obligation of the Independent Lot owner to repay shall commence upon its execution and continue until the

earlier of (i) twenty (20) years after the performance guaranty is released for the final Phase of the Improvements (as described in Section 4.1) or (ii) the date on which the developer has received reimbursement from the Independent Lot Owners for 1,131 Lots less all of those Lots owned by the Developer or its affiliates, as shown on the Plans.

SIGNATURES ON NEXT PAGE

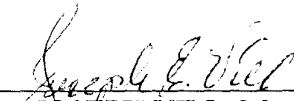
IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

_____ day of February, 2003.

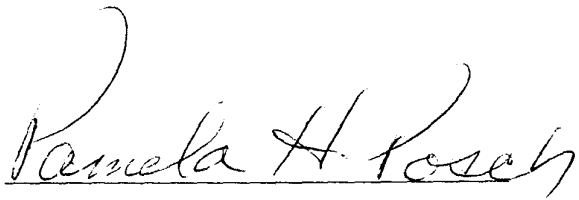
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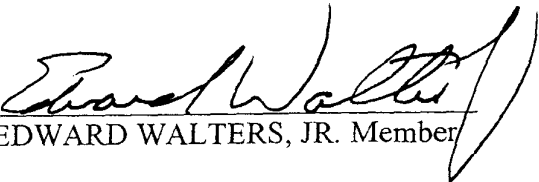
BARNEGAT TOWNSHIP


VERONICA JASINA, Municipal Clerk

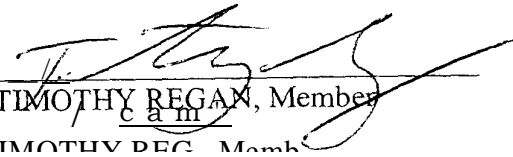
By: 
JOSEPH VILL, Mayor

~~MARK MADISON, LLC~~



By: 
EDWARD WALTERS, JR. Member



By: 
TIMOTHY REGAN, Member
TIMOTHY REGAN, Member