



Hackensack Meadowlands Development Commission

Memorandum

TO HMDC Commissioners and Alan J. Steinberg, Esq.

FROM Robert Ceberio, Deputy Executive Director

Date May 25, 1999

Subject 16th Street Redevelopment Area - Selection of Redeveloper

Following the Commission's adoption of the 16th Street Redevelopment Plan, on January 27, 1999, staff issued a Request for Proposals (RFP) inviting potential developers to submit plans for the development of the 16th Street area located in North Bergen, New Jersey (attached). In response to this RFP, proposals were submitted by Ogden Realty II and CSX Transportation, Inc. on March 26, 1999.

The proposals were thoroughly analyzed by staff utilizing evaluation criteria established for the review process. The applicants were also given the opportunity to come before the evaluation team to answer outstanding questions on their submittals and given the opportunity to provide any additional information required to evaluate their respective projects. Both respondents met independently with HMDC staff and Joseph Auriemma, Township Administrator for North Bergen on April 5, 1999.

Following these meetings and review of additional information submitted by the respondents shortly after the meetings, the proposals were reassessed. (A summary of the evaluation criteria and scores for both proposals is attached.) The proposal submitted by Ogden Realty II was ranked higher due to its feasibility, timetable, and likelihood of implementation without a significant level of HMDC involvement.

CSX Transportation, Inc., through their attorneys, subsequently submitted a letter, dated May 10, 1999, claiming there is illegal fill on the site in question. This letter was also replied to by Ogden Realty II, through their attorneys, in a letter dated May 14, 1999. The CSX letter states that CSX Transportation, Inc. hired Gannett Fleming ("GF") to perform a preliminary wetlands investigation on the Ogden Realty II property on May 3, 1999. GF apparently conducted a field investigation that day. The two page memo from GF stated that GF believes there is fill, but was unable to determine a date upon which it might have been placed. The letter indicated GF would have to look at historic aerials to determine the date.

Following the receipt of this letter, HMDC staff reviewed aerial photographs taken between 1972 and 1997. Although the parking lot was expanded since 1972, it was not expanded into a wetlands area. Also, Ogden Realty II has a wetlands delineation which was done in 1988 and again for the ACE verification in 1995 (submitted at the August 27, 1999 public hearing as Exhibits A-22 and A-24). Using these delineations as a guideline, staff is of the opinion that the fill does not infringe into the wetlands area that was delineated and approved by the Corps. Additionally, the redevelopment plan submitted by Ogden Realty does not propose going any further

HMDC Commissioners and Alan J. Steinberg, Esq.

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into these wetlands. While this issue is not of direct relevance to the evaluation criteria, we wanted to advise you of its existence, and of our analysis, since it has been raised by a party.

CSX, through its attorneys, has also argued on several occasions, that the issue of the need for a wetland fill permit should not be considered as an deficiency in their proposal. Without conceding the point, but to address this concern and be as objective as possible, the HMDC staff removed this factor from consideration and reassessed both proposals. The Ogden Realty II proposal still received a more favorable score.

Based on the thorough evaluation of the two development proposals received, the proposal submitted by Ogden Realty II, outscored the proposal submitted by CSX Transportation, and is considered to be the most feasible to meet the requirements of the redevelopment plan.

As you are aware, we have provided the following materials for your consideration:

1. January 27, 1999 Public Notice/Informal RFP
2. Summary Evaluation Sheet - CSX Transportation Submittal
3. Summary Evaluation Sheet - Ogden Realty II Submittal
4. CSX Transportation, Inc. Redevelopment Proposal for the Development of the 16th Street Redevelopment Area, March 26, 1999
5. Ogden Realty II, Redevelopment Proposal for the Development of the 16th Street Redevelopment Area, March 25, 1999
6. March 30, 1999 letter from J. Buonocore, Esq. on behalf of Ogden Realty II
7. April 9, 1999 letter from J. Buonocore, Esq. on behalf of Ogden Realty II
8. April 12, 1999 letter from J.S. Lee Cohen, Esq. on behalf of CSX Transportation, Inc.
9. May 4, 1999 letter from J.S. Lee Cohen, Esq. on behalf of CSX Transportation, Inc.
10. May 10, 1999 letter from J.S. Lee Cohen, Esq. on behalf of CSX Transportation, Inc.
11. May 14, 1999 letter from J. Buonocore, Esq. on behalf of Ogden Realty II

Attached is a resolution which will designate Ogden Realty II as the redeveloper, contingent upon Ogden Realty II entering into a satisfactory redevelopment agreement with the HMDC and the Township of North Bergen within one month. Additionally, the resolution will authorize the Executive Director to enter into said agreement, and to extend the one month deadline at his discretion.

**RESOLUTION TO SELECT OGDEN REALTY II AS REDEVELOPER
OF THE 16TH STREET AREA IN NORTH BERGEN, NEW JERSEY
CONDITIONED UPON EXECUTION OF A SATISFACTORY REDEVELOPMENT
AGREEMENT BETWEEN HMDC, THE TOWNSHIP OF NORTH BERGEN AND
OGDEN II REALTY**

WHEREAS, N.J.S.A. 13:17-20 provides for the procedure declaring a renewal area within the Hackensack Meadowlands District for the purpose of redevelopment; and

WHEREAS, the Commission has authorized a preliminary investigation of Block 449A, Lots A1-2A, 3-1, 4, 5, and 6A2, 6B1 which report was completed by staff; and

WHEREAS, the Commission has authorized staff to prepare a redevelopment plan for Block 449A, Lots A1-2A, 3-1, 4, 5, and 6A2, 6B1 (16th Street Redevelopment Area) in accordance with N.J.S.A. 13:17-21; and

WHEREAS, the Commission adopted the 16th Street Redevelopment Plan on January 27, 1999; and

WHEREAS, a Request for Proposals (RFP) was issued on January 27, 1999 to obtain development plans for the 16th Street redevelopment area; and

WHEREAS, HMDC staff has reviewed all responses to the RFP consisting of submissions of Ogden Realty II and CSX Transportation, Inc., a subsidiary of CSX Corporation, both submitted on March 26, 1999; and

WHEREAS, HMDC staff has thoroughly evaluated both proposals using evaluation criteria developed for this purpose; and

WHEREAS, HMDC staff has determined that the proposal submitted by Ogden Realty II outscored the proposal submitted by CSX Transportation, Inc., and is considered to be the most feasible to meet the requirements of the redevelopment plan; and

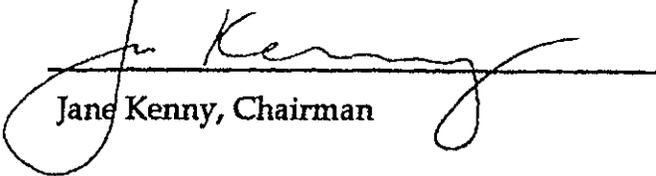
NOW THEREFORE IT BE RESOLVED, by the Hackensack Meadowlands Development Commission, that Ogden Realty II is hereby selected as the redeveloper of the 16th Street Redevelopment Area in North Bergen New Jersey; and

BE IT FURTHER RESOLVED, that the designation of Ogden Realty II as the redeveloper is contingent upon the execution of a redevelopment agreement between Ogden Realty II, HMDC, and the Township of North Bergen, which is satisfactory to the Executive Director, within one month of the effective date of this resolution; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to enter into a redevelopment agreement with Ogden Realty II, and the Township of North Bergen; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to extend the deadline for execution of the redevelopment agreement for reasonable periods of time at the discretion of the Executive Director.

The foregoing Resolution was adopted by Commission vote.


Jane Kenny, Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the Hackensack Meadowlands Development Commission at its meeting of May 26, 1999.


Alan J. Steinberg, Esq., Secretary

16th St. Red. Area

REDEVELOPMENT AGREEMENT

Between

Hackensack Meadowlands Development Commission

and

Township of North Bergen

and

Ogden Realty, II

Dated:

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EXHIBITS

- A. Letter Stating Authority of Signatories
- B. 16th Street Redevelopment Plan

THIS REDEVELOPMENT AGREEMENT ("Agreement") made as of this _____
day of _____, 1999 by and between:

THE HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
("HMDC," or "Commission"), a political subdivision of the State of New Jersey, having its
offices at One DeKorte Park Plaza, Lyndhurst, New Jersey 07071;

THE TOWNSHIP OF NORTH BERGEN ("Township") a municipal corporation of
the State of New Jersey having its offices at 4233 Kennedy Boulevard, North Bergen, New
Jersey 07047;

AND

OGDEN REALTY, II, a New Jersey Partnership, ("Developer"), having its offices at
2820 16th Street, North Bergen, New Jersey 07047.

WITNESSETH

WHEREAS, the Hackensack Meadowlands Reclamation and Development Act N.J.S.A.
13:17-1 et. seq. (the "HMDC Act") authorizes the Commission to prepare and adopt
redevelopment plans for area subject to its zoning jurisdiction and determined by the
Commission to be renewal areas; and

WHEREAS, approximately 54 acres of land accessible via 16th Street of the Township,
in the County of Hudson (the "Redevelopment Area"), near the intersection of 16th Street and
Secaucus Road and known as Block 449A, Lots A1-2A, 3-1, 4, 5, 6A2 and 6B1 on the tax maps
of the Township is subject to the zoning jurisdiction of the Commission; and

WHEREAS, the Township has advised the Commission that the Redevelopment Area is not properly utilized, and without public intervention, will not realize its appropriate development potential in furtherance of the public health, safety and welfare of the Township; and

WHEREAS, after a preliminary investigation by the Commission staff, a public hearing was held on August 27, 1998 concerning the designation of the Redevelopment Area as a renewal area pursuant to the HMDC Act; and

WHEREAS, following the August 27, 1998 public hearing, and in accordance with N.J.S.A. 13:17-20, the Commission adopted Resolution 98-56 on October 28, 1998 declaring the Redevelopment Area a renewal area; and

WHEREAS, Resolution 98-56 also directed the Commission staff to develop a redevelopment plan for such property (the "Redevelopment Plan"), which was adopted by the Commission on January 27, 1999; and

WHEREAS, in accordance with said Redevelopment Plan, the Commission also requested proposals from interested entities for the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan, and the January 27, 1999 Memorandum (the "RFP") issued by Alan J. Steinberg, Esq., Executive Director of the HMDC, regarding the 16th Street Redevelopment Area, North Bergen; and

WHEREAS, in response to the RFP, on March 26, 1999 the Commission received competing plans for the redevelopment of the Redevelopment Area, including one plan from the current owner of the property, Ogden Realty, II (the "Developer"); and one plan from CSX Transportation, Inc. a subsidiary of CSX Corporation ("CSXT"); and

WHEREAS, HMDC has reviewed the concept plans and submission of the Developer, and the submissions of CSXT; and

WHEREAS, the plan submitted by Developer provided for development of the approximate 54 acres identified in the Redevelopment Area together with approximately three (3) acres of contiguous property owned by Developer known as Block 449A, Lots A1-2B, 1-2 and 2-2 in the Township of North Bergen, being all of the contiguous real property owned by Developer (all of which is hereinafter referred to as "Project Site").

WHEREAS, the plan submitted by Developer provides for development at and adjacent to the Project Site consisting of (1) (i) the landscaping, rehabilitation, and improvement of buildings and certain parking areas; (ii) the construction of a parking and storage area, with necessary and ancillary site improvement plans; (iii) the design of the road improvements and utility installation for Phase II ((iii) is hereinafter referred to as "Roadwork") and the posting of a bond in a sufficient amount to insure the completion of the Roadwork ("Phase I"), (2) installation of curbs and storm water sewers along, and the widening and repaving of, 16th Street and the development of an approximately 50,000 square foot distribution center, with necessary and ancillary site plan improvements ("Phase II"), and (3) the development of an approximately 350,000 square foot distribution facility to be used consistent with the HMDC Master Plan, with necessary and ancillary site improvements ("Phase III"), all in accordance with the Redevelopment Plan, but subject to all applicable zoning requirements (the Redevelopment Project); and

WHEREAS, the Redevelopment Project would have an impact on the health, safety, and welfare of the Township; and

WHEREAS, due to such impacts, the Commission has invited the Township to be a party to this Agreement; and

WHEREAS, pursuant to section 38 of the HMDC Act, the Redevelopment Project shall be taxed as real property by the Township; and

WHEREAS, HMDC and the Township have determined that the proposal submitted by Developer best fulfils the objectives of the Commission and the Township for the Project Site subject to the conditions contained herein; and

WHEREAS, the HMDC and the Township have determined that the Developer possesses the requisite qualifications and is satisfied that the financing mechanisms are available to redevelop the Project Site in accordance with the Redevelopment Plan for the Project Site; and

WHEREAS, Developer agrees to construct the project as generally depicted in the Redevelopment Plan and in the concept plans and submissions to the HMDC in connection with the selection of the Developer as the redeveloper of the Project Site; and

WHEREAS, the HMDC has named the Developer as redeveloper pursuant to the HMDC Act for the purpose of undertaking and completing the Redevelopment Project;

WHEREAS, the parties desire to enter into this Agreement for the purpose of setting forth in greater detail their respective undertakings, rights, and obligations in connection with the Project, all in accordance with the Redevelopment Plan and applicable law and the terms and conditions of this agreement hereinafter set forth;

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

ARTICLE 1. SELECTION AND DUTIES OF THE DEVELOPER

1.01. Designation of the Developer. The Commission having adopted Resolution 99-40, designates Ogden Realty, II ("Developer") as the redeveloper subject to the execution of this Agreement. Developer agrees to clear, construct, reconstruct and/or rehabilitate each of the parcels within the Redevelopment Area, consistent with the requirements set forth in the

Redevelopment Plan, as it may be amended from time to time, and substantially consistent with the proposal submitted by Ogden Realty, II to the HMDC on March 26, 1999, which is hereby incorporated by reference, and consistent with the terms and conditions of this Agreement, including the Schedule of Compliance, as set forth in Article 2.04 of this Agreement. This implementation of the Redevelopment Plan in the Redevelopment Area shall hereinafter be referred to as the "Project."

1.02. HMDC shall forthwith take any and all actions to include in the Redevelopment Area the contiguous lots owned by Developer and shown on the tax maps of the Township as Lots A1-2b, 1-2 and 2-2 in Block 449A, being all of the contiguous real property owned by Developer and comprising approximately three acres and that all references to the Redevelopment Area shall include the aforesaid approximately three acres.

1.03. Amendments to this Agreement. The parties agree that this Agreement may be amended only upon mutual written consent of the parties, which shall not be unreasonably withheld.

1.04. Developer Payments to the Township as Real Estate Taxes.

a. The parties acknowledge that pursuant to N.J.S.A. 13:17-38 the Project shall be taxed as real property by the Township of North Bergen (the "Township"). To prevent any undue losses of revenues to the Township due to the failure of the Developer to complete the Project, and as additional consideration to be named as redeveloper by the Commission, the Developer has agreed to make certain payments to the Township as described herein. For the purposes of the payments described herein, Township represents to Developer that the Township is on a fiscal year running from July 1 to June 30 and that real estate taxes are computed on a fiscal year running the same period.

b. In connection with Phase I and Phase II of the Project (as hereinafter described), the Developer will pay the real estate taxes on all land and improvements due annually based on the actual assessment by the Township. Payments under this Article (b) shall begin on the

Township's next tax quarter following execution of this Agreement.

c. In connection with Phase III of the Project, as hereinafter defined, the Developer agrees to pay to the Township a developer's fee (the "Developer's Fee"). Said Developer's Fee shall be due annually beginning January 1, 2003, and ending upon the earlier of the expiration of the five (5) year tax abatement agreement referred to in Paragraph (e) hereof or the termination of the Agreement pursuant to Article 6. The Developer's Fee shall be due in equal quarterly installments on each August 1, November 1, February 1 and May 1 in accordance with schedule of the Township for the collection of real estate taxes with the exception of the payment for the Developer's Fee due for the fiscal year ending June 30, 2003, which shall be due on June 30, 2003 without interest. The Developer agrees that the Township shall have the same remedies available to it for a failure to pay the Developer's Fee which are available for the non-payment of taxes. For the period commencing January 1, 2003 and ending June 30, 2003, the Developer's Fee shall be \$175,000 less the adjustments set forth in Section 1.04(d) pro rated for the six (6) month period of the fiscal year ending June 30, 2003.

For each annual period commencing July 1, 2003, the Developer's Fee shall be \$350,000 less the credits set forth in Paragraph (d) hereof until the Developer's obligation to pay the Developer's Fee shall cease upon the earlier of (i) the expiration of the Tax Abatement Agreement or (ii) termination of the Agreement pursuant to Article 6 hereof.

d. The Developer shall be entitled to a credit against the Developer's Fee (i) for real estate taxes due and paid on the land comprising Phase III, (ii) for any payments due and paid pursuant to a Tax Abatement Agreement entered into pursuant to Section 1.04(e) hereof, and (iii) in the event that the building improvements listed in Phase II of the Project are in excess of

50,000 square feet a credit as computed below. Township and Developer agree that for purposes of assessment of the building improvements listed in Phase II of the Project, said building will be assessed as a whole, with each part of the structure being of uniform value. Said credit shall be equal to actual taxes due and paid on the building improvements listed in Phase II of the Project for a given year (the "Actual Taxes on Improvements") minus X, where X is equal to the following formula:

$$\begin{aligned} X &= (50,000/Y)*T \\ Y &= \text{Actual Square Footage of the building improvements listed in} \\ &\quad \text{Phase II of the Project} \\ T &= \text{Actual Taxes on Improvements} \end{aligned}$$

Any such credits available under this Section 1.04(d) may reduce the Developer's Fee due in any year to zero, however, any excess credit not used in any one year shall not be transferable to obligations of the Developer due under this Section 1.04 for any other year. In no event shall the accrual of any credit cause the payment of any amount from the Township to the Developer.

e. The Township and the Developer agree that the Township shall adopt a five (5) year tax abatement/exemption agreement with the Developer in accordance with the Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq. (the "Tax Abatement Law") for Phase III of the project, provided the Developer makes proper application in accordance with the Tax Abatement Law (the "Tax Abatement Agreement"). The Tax Abatement Agreement shall establish a payment in lieu of real estate taxes on the improvements described in Phase III of the project that is consistent with N.J.S.A. 40A:21-10. The Developer and the Township agree that it is intention of both parties that the Developer shall pay to the Municipality in lieu of full

property tax payments on Phase III improvements a sum equal to forty percent (40%) of the real estate taxes that would otherwise be due on the improvements over the five (5) year abatement period, such period to commence upon the completion of Phase III of the Project. The Township desires to have the Developer pay the forty (40%) percent in level payments over the five (5) year period. The Developer is willing to do so provided, however, in the event the Tax Abatement Agreement is successfully challenged in any court or other governmental agency having jurisdiction, then, and in that event, the taxes shall be computed in accordance with N.J.S.A. 40A:21-10(c) for the five (5) year period and in the event that Developer has paid to the Municipality more than it would be required to have paid under N.J.S.A. 40A:21-109(c), the Township shall refund such excess monies to Developer forthwith. In the event Developer has paid less than would otherwise have been paid under N.J.S.A. 40A:21-10(c), Developer shall forthwith pay to the Municipality the deficient amount. In the event that a challenge is made to the Tax Abatement Agreement, the adjustment immediately set forth above shall be placed in escrow to be held by the Township's attorney in his trust account until resolution of the challenge. To the extent that the credit due to the Tax Abatement Agreement will cause a Developer's Fee due under Section 1.04(c) to be reduced to zero without giving effect to the credit due under Section 1.04(d)(ii) above, the Tax Abatement Agreement may give effect to such Section 1.04(d)(ii) credit.

1.05. Reimbursement of Township's Administrative Costs.

a. The Developer agrees to reimburse the Township for attorneys fees incurred by the Township for legal services rendered in connection with this Agreement in an amount not to exceed \$25,000.00. The Developer further agrees to reimburse the Township for other reasonable and necessary professional fees incurred by the Township in connection with the

development of the Project for architectural, engineering, legal or planning services of professionals retained by the Township with the prior approval of the Developer, which approval shall not be unreasonably withheld. The Township agrees to submit invoices for such reimbursement, in a form acceptable to the Developer, on a monthly basis as of the 15th of each month.

1.06. Inspection and Access. The HMDC and the Township shall have the right at all times during normal business hours, in accordance with the existing regulations of HMDC, to enter upon the Project Area for the purpose of inspecting the status of any work being done by the Developer or its agents, contractors, subcontractors, or servants.

1.07. Indemnification.

a. Developer agrees to indemnify and hold harmless the HMDC and the Township, and to pay any reasonable expenses, of any and all kinds of nature, and however arising, imposed by law, which the HMDC and/or Township may sustain, be subject to or be caused to incur by reason of any claim, suit, or action based upon personal injury, death, or damage to property, whether real, personal or mixed, relating to the Developer's activities in constructing the Project, including but not limited to any and all claims by workmen, employees and agents of Developer and unrelated third parties, which claims arise from the construction of the Project, the maintenance and functioning of the Project improvements, or any other activities of the Developer within the Project Site during the construction of the Project. It is mutually agreed by the Developer and the HMDC and/or Township that neither the HMDC and/or Township, nor its directors, officers, agents, servants, or employees shall be liable in any event for any action performed under this Agreement by Developer or contemplated by the construction of the Project and that Developer shall save the HMDC and the Township its directors, officers, agents, servants, or employees harmless from any such claim or suit, except for any claim or suit arising from the intentional and willful acts of the HMDC or the Township or their gross negligence.

b. Developer, at its own cost and expense, shall defend any and all such claims, suits, and actions, as described in the preceding Paragraph, which may be brought or asserted against the

HMDC and/or the Township, its directors, officers, agents, servants, or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Developer, HMDC, Township, or any other insured named in such policy of the insurance in connection with claims, suits or actions covered by such policy.

c. In the event the Developer does not meet its obligations under paragraphs 1.07(a) and (b), then and in that event, any cost for reasonable attorneys' fees in situations where it is necessary for the HMDC or Township to engage its own attorneys, experts testimony costs and all costs to defend the HMDC or any of its directors, officers, agents, servants, or employees shall be reimbursed to it by Developer in connection with such indemnification claim.

1.08. "ISRA" Compliance. The Developer acknowledges that the lands in the Project Site are not subject to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA").

ARTICLE 2. ACQUISITION, CONSTRUCTION, AND FINANCING OF PROJECT.

2.01. Developer's Representations.

The Developer represents that it holds fee simple absolute title to the entire Project Site. The Developer further represents that such site is not encumbered by any mortgage or lien, whether by express agreement or operation of law, and that such Project Site shall remain clear of any such encumbrances, except those permitted by this Agreement for the purpose of obtaining funds in connection with the Project. The Developer further represents that it is fully capable, ready, willing and able to prosecute to completion the Project within the time frame set forth herein, subject to institutional financing for Phases II and III.

2.02. Phases of the Project The Developer agrees to commence and diligently prosecute to completion the construction of the Project in accordance with Article 2.04 of this Agreement. The Project Site shall be developed in three phases as follows:

a. Phase I shall include the rehabilitation and improvement of certain structures, the landscaping, rehabilitation and improvement of certain parking areas and the construction of a parking and storage area in accordance with HMDC design standards with necessary and ancillary site plan improvements, as generally depicted on the plan entitled "Ogden Transportation Complex, drawing MP-1 prepared by Mario V. Cammarano, P.E., R.A. in the March, 1999 development proposal and the design of the Roadwork and utility installations for Phase II and the posting of a bond in a sufficient amount to insure the completion of the Roadwork in Phase II ("Phase I").

b. Phase II shall include the installation of curbs and storm water sewers along, and the widening and repaving of, 16th Street and the development of an approximately 50,000 to 100,000 square foot distribution facility, with necessary and ancillary site plan improvements, as generally depicted on the plan entitled "Ogden Transportation Complex, drawing MP-1 prepared by Mario V. Cammarano, P.E., R.A. in the March, 1999 development proposal (the "Phase II");

c. Phase III shall include the development of an approximately 300,000-350,000 square foot distribution facilities or such other uses permitted by the Redevelopment Plan, with necessary and ancillary site plan improvements, as generally depicted on the plan entitled "Ogden Transportation Complex, drawing MP-1 prepared by Mario V. Cammarano, P.E., R.A. in the March, 1999 development proposal (the "Phase III").

2.03. Preliminary Plans and Submissions. The Developer will, however, obtain appropriate permits and approvals from the Commission and the Township in connection with completion of Phase I of the Project. Site plans for the Trailer Parking/Storage area of Phase I and site plans for Phase II have been submitted to the Commission. Construction of these facilities will begin at the later of obtaining the approval of the Commission and receipt of any other required Governmental Approvals or at the dates set forth in paragraph 2.04. All submissions shall be in conformity with the Redevelopment Plan, this Agreement, and any and all federal, state, HMDC, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto.

2.04. Commencement and Completion Schedule. The Developer agrees to diligently pursue construction of the Project in accordance with the herein contained schedule.

	<u>Commencement Date</u>	<u>Completion Date</u>
	<u>No Later Than</u>	<u>No Later Than</u>
Phase I	4/01/00	6/01/00
Phase II	4/01/00	4/01/01
Phase III	12/01/03	12/31/04

“Commencement Date” as used in this Agreement shall mean the date on which the clearing or grading activity occurs and appropriate machinery is mobilized for construction on the parcel. “Completion Date” used in this Agreement shall mean the date on which the Developer has achieved substantial completion of that phase or a temporary Certificate of Completion or a Certificate of Completion as provided for in Article 2.07 of this Agreement.

The time for commencement or completion of the Project shall be extended for a period of time equal to any delay in construction due to any of the causes set forth in Article 8 of this Agreement.

2.05. Project Costs and Financing. The Commission, the Township and the Developer hereby agree that project financing will be the responsibility of the Developer. Developer has produced evidence of project financing for Phase I and Phase II of the Project. The Developer shall produce evidence of project financing for Phase III of the Project in a timely manner so as not to delay the commencement of Phase III.

2.06. Insurance and Indemnification. Developer agrees to secure, and to maintain in effect until substantial completion of the Project the following coverages:

- a. Builder's Risk Insurance for the benefit of the Developer during the term of the

construction which will protect against loss or damage resulting from fire or lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability shall be equal to one hundred percent of the insurable Project, or any Phase thereof, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction. The Developer shall provide to the Commission proof of such insurance prior to beginning the construction of each of the Phases of the Project;

b. Liability insurance in the amount of [Five Million Dollars (\$5,000,000.00)] naming the Commission and the Township as insured parties and insuring them against the claims of third parties arising from the construction and installation of the Project; and

c. Workers Compensation insurance at the statutory levels. The Developer further agrees to indemnify and hold harmless the Commission and the Township against any and all claims by third parties, including but not limited to workers, employees and agents of Developer and unrelated third parties, which claims may arise from the construction, installation, maintenance and functioning of the Project and other Project-related improvements, or any other activities of Developer on the Project Site, unless caused by negligence of the Commission or the Township, their employees, agents or contractors. Developer shall provide to the Commission proof of such insurance prior to beginning the construction of the Project.

2.07. Certificates of Occupancy, Certificate of Completion, and Certificate of Project Completion. Upon completion of the construction of each Phase of the Project, in accordance with the Redevelopment Plan, this Agreement and applicable building codes and ordinances, Developer shall apply to the HMDC for a Certificate of Completion ("CT") for said Phase. Upon receipt of the applicable CT, the Developer shall apply to the Township for a Certificate of Occupancy ("CO"). The CO, when issued, shall constitute evidence that the Developer has fully performed its obligations under this Agreement as to said Phase and that said construction conforms to applicable codes, standards, and/or regulations. In addition, if requested by Developer, when Certificates of Occupancy have been issued, and the Project has otherwise been

fully completed, the HMDC shall issue a comprehensive Certificate of Project Completion ("CPC") for the entire Project to encompass all of the buildings, common elements, and all other amenities included in the Project. The Commission agrees to issue a CPC, in proper form for recording, which shall acknowledge that Developer has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of this Agreement and applicable codes, standards, and/or regulations.

The CPC shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the obligations of Developer to construct the Project within the dates for the commencement and completion of same. The CPC shall also constitute a conclusive determination that the conditions determined to exist at the time the area was determined to be in need of redevelopment shall be deemed to no longer exist. If the Commission shall fail or refuse to provide the CPC within thirty (30) days after written request by Developer, the Commission shall provide the Developer with a written statement setting forth in detail the reasons why it believes that Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts will be necessary in the opinion of the Commission and the Township in order for Developer to be entitled to the CPC.

ARTICLE 3. DEED AND COVENANTS.

3.01. Covenants and Restrictions. The Developer agrees to include these covenants, as set forth below, in a Declaration of Covenants and Restrictions with respect to the Project Site, such declarations to be recorded in the Office of the Hudson County Register of Deeds (the "Recorded Declarations").

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

a. Devote the Project Site to the uses specified in the Redevelopment Plan, and shall not devote the Project Site to any other use(s) until the CPC has been issued;

b. Not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Project Site or any buildings or structures erected or to be erected thereon, or any part thereof;

c. In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Site or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and Developer, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

3.03. Effect and Term of Covenants. It is intended and agreed, and the Recorded Declarations shall so expressly provide, that the agreements and covenants set forth in Article 3.02 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the HMDC, its successors and assigns, and any successor in interest to the Project Site, or any part thereof, against Developer, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project Site or any part thereof. It is further intended and agreed that the agreements and covenants set forth in Article 3.02(a) shall remain in effect until the issuance of the CPC, or until the expiration of the Redevelopment Plan, whichever date occurs sooner (at which time such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in Articles 3.02(b), and (c) shall remain in effect without limitation as to time. However, such agreements and covenants shall be binding on Developer itself, each successor in interest to the Project Site, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Developer or such successor or party shall have

title to, or an interest in, or possession or occupancy of the Project Site, the buildings and structures thereon or any part thereof.

3.04. Enforcement by Commission. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed (and the Recorded Declarations shall so state) that the Commission and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Article 3.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Commission for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Commission has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Commission shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE 4. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER.

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

4.02. Prohibition Against Transfers. Developer further represents and agrees for itself, its successors and assigns, that except only by way of security for and only for the purpose of obtaining the financing necessary to enable Developer or any successor in interest to the Project

Site, or any part thereof, to perform its obligations with respect to completing the Project and any other purpose authorized by this Agreement, that Developer has not made or created, and that it will not, prior to the completion of the Project, make or create, or permit to be made or created, any sale, lease, other than to a user, conveyance, or transfer in any other mode or form of the Project Site, or any building or structure thereon or any part thereof or any interest therein, ~~without the prior written approval of the Commission, which consent shall not be unreasonably withheld,~~ except for the transfers identified in Article 4.03 of this Agreement.

4.03. Acceptable Transfers. The following transfers are exceptions to the prohibition set forth in Article 4.02 and shall not require prior approval by the Township or HMDC:

- a. a mortgage or mortgages either construction or permanent, and other liens and encumbrances for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project subject to Article 7 of this Agreement;
- b. leases to tenants of individual units in the Project, providing that necessary permits must be obtained from the HMDC pursuant to HMDC regulations;
- c. utility and other development easements;
- d. any contract or agreement with respect to any of the foregoing exceptions;
- e. transfers to an entity controlled by the partners of Developer;
- f. transfers by Will or to a trust for the benefit of a spouse or issue of a partner of Developer, either by Will, operation of law or Inter Vivos;
- g. transfers by order of a Court of competent jurisdiction; and
- h. such other transfers as agreed to by HMDC.

4.04. Restraints Against Transfer. The Developer shall record evidence of such restraints against transfers, as set forth in Articles 4.02 and 4.03 with the Hudson County Register of Deeds. Such evidence shall also provide that in the event of any attempted transfer in violation of the restriction in Articles 4.02 and 4.03 hereinabove, the Commission shall be entitled to the ex parte issuance of an injunction restraining such transfer, and Developer shall reimburse the Commission for its legal fees and related expenses in conjunction with any such legal action.

Upon the recording of the encumbrance in the Office of the Hudson County Register of Deeds, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

4.05. Conditions of Transfer. Except as otherwise provided in this Agreement, and ~~except with respect to transfers permitted under Article 4.03 hereinabove, the Commission shall~~ be entitled to require, as conditions to the approval of any transfer provided for in Article 4.02 of this Agreement that:

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

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

c. All instruments and other legal documents involved in effecting such transfer shall be submitted for review to the Commission and the Commission shall indicate their approval or disapproval to Developer in writing; and

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

e. Developer and its transferees shall comply with such other reasonable conditions as the Commission may find necessary in order to achieve and safeguard the purposes of the

Redevelopment Plan.

f. the provisions of this Article 4 shall terminate and be of no further force and effect after the completion of the Project.

ARTICLE 5. MORTGAGE FINANCING: RIGHTS OF MORTGAGEE

5.01. Notice to Commission. Prior to the completion of the Project, as certified by the Commission, neither the Developer nor any successor in interest to the Developer or any partner thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Site, whether by express agreement or operation of law, or permit any encumbrance or lien to be made on or attach to the Project Site, except for the purpose of obtaining funds in connection with the Project. Developer or its successor in interest shall notify the Commission in advance of any financing, secured by mortgage or other lien instrument, which it proposes to enter into with respect to the Project Site or any part thereof. Developer shall promptly notify the Commission of any encumbrance or lien that has been created on or attached to the Project Site, whether by voluntary act of Developer or otherwise, upon obtaining knowledge or notice of same. The provisions of this Article 5.01 shall not be deemed to grant to the Commission the right to approve or review the terms of any such proposed financing.

5.02. Completion of Project. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, including, but not limited to a deed in lieu of foreclosure, including (i) any other party who thereafter obtains title to the Project Site or such part from or through such holder and (ii) any purchaser at foreclosure sale other than the holder of the mortgage itself), shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the

Recorded Declarations be construed to so obligate such holder, provided that nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Redevelopment Plan or this Agreement.

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

5.04. Mortgagee's Right to Cure Default and Assume Developer's Obligations. After any breach or default referred to in Article 5.03 above, each holder shall (insofar as the rights of the Commission are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage, provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Article or any other Article of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the holder's security, including the improvements or construction already begun) without first having expressly assumed the obligation to the Commission, by written agreement satisfactory to the Commission, to complete, in the manner provided in this Agreement, the Project on the Project Site or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the Commission, to receive the Certificates of Occupancy for the individual buildings, the overall Certificate of Occupancy for the Project, if any, and the Certificate of Completion as hereinabove set forth in Article 2 of this Agreement.

ARTICLE 6. DEFAULT.

6.01. Events of Default. Prior to completion of the Project as certified by the Commission, each of the following shall constitute an Event of Default:

a. Developer or its successor in interest shall fail to substantially complete construction of Phase III by 12/31/04.

b. Developer or its successor in interest shall fail to pay any real estate taxes or other payments required by Article 1.04 of this Agreement on all land and improvements, or assessments on the Project, the Project Site or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, and such real estate taxes on all land and improvements, or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Commission made for such payment, removal, or discharge, within ninety (90) days after written demand by the Commission to do so; or

c. There is, in violation of this Agreement, any transfer of the fee title to the Project Site and such violation shall not be cured within ninety (90) days after written demand served upon Developer by the Commission, unless extended in writing; or

d. The Developer shall make improvement to the Project Site or shall commence construction without having secured approval of the Project Plans by the HMDC and shall fail to submit Project Plans within thirty (30) days after written demand by the HMDC; or

e. The Developer be dissolved, or shall file a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the United States Bankruptcy Code, or any similar law, Federal or State, now or hereafter in effect, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall suspend payment of its obligations; or shall take any action in furtherance of the foregoing .

THEN, the HMDC with the consent of the Township shall upon written notice, as specified in Article 12 of this Agreement, at its sole option terminate this Agreement or require appropriate cures, and if not satisfied therewith, shall be free to take action to select another developer and acquire the property by eminent domain, in accordance with law, if necessary. If the HMDC takes no action, the Developer shall continue to pay taxes and to make the minimum payment in lieu of taxes to the Township in the amount of \$350,000, all as required by and in accordance with Article 1.04 of this Agreement and this Agreement shall remain in full force and effect.

ARTICLE 7. REPRESENTATIONS.

7.01. Developer hereby makes the following representations and covenants:

- a. It has the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth and as set forth in the Redevelopment Plan as of the date of this Agreement, and will provide to the HMDC such necessary indications of the authority of signatories to this Agreement to bind the Developer, which documents shall be made a part hereof and attached hereto as Exhibit A.

- b. It is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary actions have been taken to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Developer's behalf.

- c. It owns and controls all of the lands in the Project Site and such lands are free of all encumbrances, except such encumbrances permitted by this Agreement.

- d. To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by Developer pursuant to this Agreement; or

(ii) is likely to result in a material adverse change in Developer's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

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

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

ARTICLE 8. DELAYS.

8.01. For the purposes of any of the provisions of this Agreement, neither the Commission nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or in default with respect to its obligations hereunder because of any enforced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or omissions of the other parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any federal, state or local governmental or quasi-governmental authority or commission with respect to the Governmental Approvals or the development of the Project (including, without limitation, a failure of the Commission to perform in accordance with the terms of this Agreement), if such actions or inactions are not caused by Developers. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Commission or Developer shall be extended for the period of the enforced delay.

ARTICLE 9. WAIVER.

9.01. No waiver may be made to this Agreement, unless in writing and mutually agreed to by all parties.

ARTICLE 10. COOPERATION AND COMPLIANCE.

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

10.02. Enforcement of Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other, furnish all necessary and reasonable documentation and take all necessary actions to assure compliance with the terms of this Agreement and the Redevelopment Plan.

10.03. The Commission and the Town agree to use their best and reasonable efforts to expedite the review and action on any approvals necessary for the Project.

ARTICLE 11. PROVISIONS NOT MERGED WITH THE DEEDS.

11.01. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deeds transferring title to any portion of the Project Site from Developer or any successor in interest, and any such Deeds shall not be deemed to affect or impair the provisions and covenants of this Agreement, except as provided in Article 5.02.

ARTICLE 12. NOTICES AND DEMANDS.

12.01. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Article 12.

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, NJ 07071
Attn: Alan J. Steinberg, Esq., Executive Director;
(with a copy to):

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, NJ 07071
Attn: Andrew R. Davis, Esq., Director of Land Use Management and Legal Affairs

Ogden Realty, II
333 Meadowlands Parkway
Secaucus, NJ 07094
Attn: Norbert Walsh

Ogden Realty, II
2820 16th Street
North Bergen, NJ 07047
Attn: Francis Walsh

Justin P. Walder, Esq.
Court Appointed Special Master
Walder, Sondak & Brogan, P.A.
Five Becker Farm Road
Roseland, NJ 07068

John H. Buonocore, Jr., Esq.
McKirdy and Riskin
136 South Street
P.O. Box 2379
Morristown, NJ 07962-2379

Marc L. Zoldessy, Esq.,
National Retail Systems
333 Meadowlands Parkway
Secaucus, NJ 07094

Township of North Bergen
Municipal Building
4233 Kennedy Boulevard
North Bergen, NJ 07047
Attn: Joeseeph Auriemma, Township Administrator

ARTICLE 13. TITLE OF ARTICLES.

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

ARTICLE 14. SEVERABILITY.

14.01. The validity of any Article, Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles, Sections, clauses or provisions hereof.

ARTICLE 15. SUCCESSORS BOUND.

15.01. This Agreement shall be binding upon the respective parties hereto and their successors and assigns.

ARTICLE 16. GOVERNING LAW.

16.01. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

ARTICLE 17. COUNTERPARTS.

17.01. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

ARTICLE 18. EXHIBITS.

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

ARTICLE 19. ENTIRE AGREEMENT.

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

ARTICLE 20. EFFECTIVE DATE.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and attested this 27 day of Oct 1999.

ATTEST:

HACKENSACK MEADOWLANDS
DEVELOPMENT COMMISSION

[Signature]

By: Alan J. Steinberg
Alan J. Steinberg, Esq.
Executive Director

Date: 10-27-99

ATTEST:

TOWNSHIP OF NORTH BERGEN

[Signature]

By: [Signature]
Joseph Auremma,
Township Administrator

Date: 9/26/99

ATTEST:

OGDEN REALTY, II

[Signature]

By: Francis Walsh
Francis Walsh

Date: 10/5/99

Mark L. Zoldessy

By: Norbert Walsh
Norbert Walsh

::ODMA\PCDOCS\docs\lib\197339\4

CERTIFICATION OF MARC L. ZOLDESSY, ESQ.

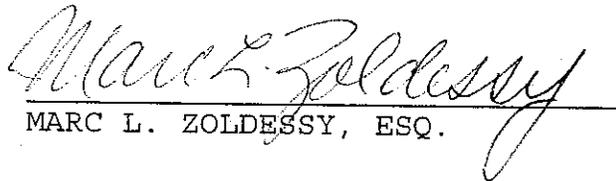
1. I am an attorney-at-law of the State of New Jersey and I am familiar with the partnership known as Ogden Realty, II (the "Partnership").

2. Ogden Realty, II is a general partnership of the State of New Jersey.

3. Francis Walsh and Norbert Walsh are the only general partners of record.

4. The Partnership Agreement gives full power to execute any document on behalf of the Partnership to Francis Walsh and Norbert Walsh.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.


MARC L. ZOLDESSY, ESQ.