

**Resolution No. 2013- 14**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF COATESVILLE, CHESTER COUNTY, PENNSYLVANIA, OFFICIALLY APPROVING A PHASE I SITE PLAN IDENTIFIED AS THE “OVERALL LAND DEVELOPMENT PLAN” SHEET 1 AND REFERENCING “COURTYARD HOTEL/OFFICE PARKING AND BASIN CONVERSION” RELATIVE TO THE DEVELOPMENT OF AN OFFICE BUILDING AND HOTEL REDEVELOPMENT PROJECT, LOCATED ALONG MANOR ROAD, APPROXIMATELY 500 FEET SOUTH OF THE US 30 COATESVILLE-DOWNTOWN BYPASS IN THE CITY OF COATESVILLE PREVIOUSLY APPROVED IN TWO LOTS AND AMENDING THE PRIOR SUBDIVISION APPROVAL TO RECOGNIZE THE REMOVAL OF THE PARKING GARAGE, REPLACEMENT WITH SURFACE PARKING AND DEVELOPMENT OF LOT II IN TWO PHASES.**

WHEREAS, the City of Coatesville is a Chartered Third Class City in the Commonwealth of Pennsylvania; and,

WHEREAS, the Coatesville Inn Associates, the developer (hereinafter also the “Applicant”), has obtained approval of a two lot subdivision for the land located along Manor Road, approximately 500 feet south of the US 30 Coatesville-Downingtown Bypass for the construction of an office building and hotel redevelopment project, and related improvements in the City of Coatesville; and,

WHEREAS, this Plan was prepared by D. L. Howell Associates, Inc.; and,

WHEREAS, the Applicant has proposed what, in essence, is a “Phase I Site Plan” identified as the “Overall Land Development Plan” prepared by D.L. Howell & Associates, Inc. dated, June 24, 2011, with a last date of revision identified as April 5, 2013, referencing “Courtyard Hotel/Office Parking and Basin Conversion” and setting forth certain improvements to lot II relative to the site work and parking which is to be done as “Phase I” to be followed by further work to be identified in further detail as “Phase II” at a time hereafter; and,

WHEREAS, the Applicant has funds in a State “Set-Aside” Letter from the Commonwealth Financing Authority which has been identified as sufficient to pay for the Phase I Site improvements at issue; and,

WHEREAS, the Coatesville City Council intends to permit the phasing of the work in Lot II relative to the Office Building and to allow the Phase I Site improvements to move forward with the express understanding that no building permits or work in excess of that identified in Phase I will be permitted until such time as an appropriate Development Agreement and Financial Security have been approved by the City Solicitor in accordance with the requirements of the MPC and the City Code and regulations; and,

WHEREAS, before further work and commencement of construction of the Office Building and related work identified in the Plans and outside the scope of the Phase I Site improvements, the Applicant will have to supply proof to the City that all conditions of the prior

approvals as well as compliance with the any review letters of the City Engineer and any and all third party regulatory comments has been addressed and valid approvals have been obtained before further work can commence.

NOW, THEREFORE, BE IT RESOLVED by the Council for the City of Coatesville, that the City of Coatesville approves Applicant's Overall Land Development Plan "Courtyard Hotel/Office Parking and Basin Conversion" and the Phase I Site work therein and recording of the Amended Plan subject to Applicant's agreement to and compliance with the conditions listed above restated as follows:

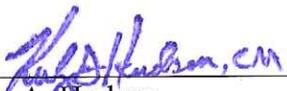
1. Submission, in a form acceptable to the Coatesville City Solicitor, of a Development Agreement and the Financial Security Agreement, including the posting of required escrow prior to commencement of any work.
2. Revisions to any easement agreements reflecting changes in the plans from those initially approved.
3. The Applicant, through its authorized representative, shall countersign a copy of this Resolution indicating acceptance by the Applicant of the above set forth conditions of Overall Land Development Plan for purposes of Phase I Site Work, and failing which the Plan of the Applicant shall be deemed denied for failure to comply with the above conditions.

IN WITNESS THEREOF, the Council of the City of Coatesville has adopted and enacted this Resolution this 8<sup>th</sup> day of April, 2013.



Name: David Collins  
Title: President, City Council

ATTEST:

  
\_\_\_\_\_  
Name: Kirby A. Hudson  
Title: City Manager

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Resolution duly adopted at a regular meeting of City Council held on April 8, 2013 and recorded in the minutes as such.

  
\_\_\_\_\_  
Name: Kirby A. Hudson  
Title: City Manager

The above conditions are accepted by the Applicant and a copy of same is hereby deemed delivered in accordance with the requirements of the Municipalities Planning Code, 53 P.S. § 101 et seq.

COATESVILLE INN ASSOCIATES,  
a Pennsylvania Limited Partnership

\_\_\_\_\_  
BY; COATESVILLE INN, LLC, a Pennsylvania  
limited liability company, general partner

BY: OLIVER COATESVILLE INN  
CORPORATION a Pennsylvania corporation,  
member

By: \_\_\_\_\_  
Donald W. Pulver, President

**AMENDMENT TO DEVELOPMENT AGREEMENT TO RECOGNIZE THE  
REMOVAL OF THE PARKING GARAGE, REPLACEMENT WITH SURFACE  
PARKING AND DEVELOPMENT OF LOT II IN TWO PHASES**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made as of this 8 day of April, A.D. 2013, by and between:

CITY OF COATESVILLE (by and through its City Council), Chester County, Pennsylvania, a City of the Third Class, with offices at One City Hall Place, Coatesville, Pennsylvania 19320 ("CITY"); and

COATESVILLE INN ASSOCIATES, a Pennsylvania limited partnership, with address at 300 Barr Harbor Drive, Suite 750, West Conshohocken, Pennsylvania 19428 ("DEVELOPER").

**BACKGROUND:**

A. DEVELOPER is in the process of developing an approximately 22 acre tract of land situate in Coatesville, Chester County, Pennsylvania, at the intersection of State Route 82 and State Route 30 in Coatesville, and all other improvements related to the land development.

B. The City Council of CITY adopted Resolutions Numbers 2010-11 and 2010-16, granting final plan approval of the application for the proposed subdivision and land development, subject to certain conditions, including the execution and acknowledgment of an agreement providing for the proper and timely completion of the proposed or required improvements and/or amenities, and the posting of financial security to guarantee said completion (the "Resolution").

C. CITY and DEVELOPER entered into a Development Agreement dated December 13, 2010 (the "Development Agreement").

D. CITY and DEVELOPER, contemporaneously with the Development Agreement, previously agreed to a certain set aside letter, attached to the Development Agreement further providing for the said financial security.

E. The parties, by these presents, desire to set forth their agreement and understanding with respect to the foregoing and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation.

a. For purposes of this Amendment, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) "TRACT" shall mean all that certain approximately 22 acre tract which is situate at the intersection of State Route 82 and State Route 30, and which is more fully and further shown and described on the PLANS.

(2) "PLANS" shall mean those certain plans identified on Exhibit "A" attached hereto and made a part hereof. Plans shall include, without limitation, all notes, statements and other information appearing on the plan, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans. For clarity, the Plans reflect the removal of the Parking Garage and replacement surface parking and the development of Lot II in two phases.

(3) "SUBJECT SUBDIVISION" shall mean the subdivision of the TRACT into two lots, to serve the same and such other IMPROVEMENTS proposed or required in, on and/or related to the proposed subdivision, as the same are more fully and further shown and depicted on and previously approved by the Land Development and Subdivision Plan, as defined in the Development Agreement and modified by the Plans.

(4) "IMPROVEMENTS" shall mean all those site improvements required by the PLANS as the same are more fully and further shown, identified or otherwise described on and by the PLANS. DEVELOPER intends to complete IMPROVEMENTS as follows: site improvements, if any, as set forth in the Plans (the "Remaining Site Improvements").

(5) "SECURED IMPROVEMENTS" shall mean all those IMPROVEMENTS for which the FINANCIAL SECURITY is provided or to which the FINANCIAL SECURITY otherwise relates.

(6) "COMPLETION DATE" shall mean the date specified in Section 2.b. of this Amendment on or before which the IMPROVEMENTS shall be completed.

(7) "FINANCIAL SECURITY" shall mean the financial security provided under and in accordance with the provisions of Section 3 of this Amendment and the provisions of the SET ASIDE LETTER (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(8) "FINANCIAL INSTITUTION" shall mean the Commonwealth Financing Authority.

(9) "SET ASIDE LETTER" shall mean that certain Set Aside Letter dated December 13, 2010, from The Commonwealth Financing Authority to CITY and acknowledged by DEVELOPER, which SET ASIDE LETTER is attached hereto as Exhibit "D."

(10) "SUBDIVISION AND LAND DEVELOPMENT ORDINANCE" shall mean The Coatesville Subdivision and Land Development Ordinance of 1985, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the

application of subsequent amendments to the SUBJECT SUBDIVISION/LAND DEVELOPMENT shall be subject to the provisions of Section 508(4) of the MPC.

(11) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, as reenacted and amended, 53 P.S. § 10101 et seq., as the same now exists and hereafter may be further amended.

(12) "CITY ENGINEER" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for CITY or engaged by CITY as a consultant thereto.

(13) "SPECIAL TERMS AND CONDITIONS" shall mean all the terms, conditions, requirements and other provisions set forth in Exhibit "B" attached hereto and made fully part hereof.

(14) "PHASE I IMPROVEMENTS" shall mean the improvements identified as "Phase I Improvements" on Exhibits "A" and "C" attached hereto.

(15) "PHASE II IMPROVEMENTS" shall mean the improvements identified as "Phase II Improvements" on Exhibits "A" and "C" attached hereto.

b. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Amendment, which also appear in the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE or the MPC, shall have the meanings and shall be interpreted herein as under the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE or the MPC.

## 2. Completion of IMPROVEMENTS.

a. DEVELOPER, at its sole expense, shall layout, construct, install, and/or otherwise complete the IMPROVEMENTS in a good and workmanlike manner, in full and strict accordance with and pursuant to the following: (i) the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE; (ii) the PLANS; (iii) the provisions of this Amendment (including, without limitation, the SPECIAL TERMS AND CONDITIONS); (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; (v) inspections and reviews undertaken by the CITY ENGINEER pursuant to applicable laws, statutes, ordinances, resolutions, rules, and regulations of CITY and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction (collectively, "Laws"), and (vi) all Laws. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions which impose the greater or greatest, as the case may be, restrictions upon the DEVELOPER shall prevail and control.

b. (i) The Phase I Improvements required by the Plans shall be completed on or before the date occurring one (1) year from the date of this Amendment. Upon written request of DEVELOPER and approval of the CITY, which approval shall not be unreasonably withheld, said completion date may be extended for one fixed period of 180 days, provided that (i) DEVELOPER's written request is received by CITY not less than sixty (60) days prior to the

then-current completion date, and (ii) the FINANCIAL SECURITY continues to remain in effect until the completion of the Improvements. Such times shall be of the essence

(ii) The Phase II Improvements required by the Plans shall be completed on or before the date on which construction of the office building identified on the Plans shall be substantially completed (the "Office Building").

c. DEVELOPER shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all IMPROVEMENTS during and after construction thereof, provided however, that in the case of IMPROVEMENTS which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by CITY or other third party, DEVELOPER shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other financial security is deposited with respect to such dedicated (or otherwise transferred or assigned) IMPROVEMENTS as provided under Section 5 below. None of the IMPROVEMENTS are intended to be dedicated to the CITY, and nothing contained in this Amendment is intended to be construed as imposing upon the CITY the obligation to accept such dedication. For purposes of this subsection, "repair and maintenance of all IMPROVEMENTS" shall mean, without limitation, keeping the IMPROVEMENTS at all times in such condition that the structural integrity and functioning of the same shall be maintained at least in accordance with and/or as contemplated by the design and specifications thereof as shown on the PLANS, and with respect to IMPROVEMENTS consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicular traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.

In the event that DEVELOPER is in default of any of its repair and maintenance obligations under this Subsection c., CITY, shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies as may be available to CITY under this Amendment, the SET ASIDE LETTER, the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, and/or the MPC, and/or otherwise at law or in equity) to:

(i) Enter upon the TRACT and satisfy any of such defaulted repair and maintenance obligation of DEVELOPER (provided that any such entry and/or satisfaction shall not be deemed, in any manner or to any extent whatsoever, as an acceptance by CITY of the dedication, transfer or other assignment of the IMPROVEMENTS subject of the default, and/or as imposing any responsibility upon CITY for the completion, further repair and maintenance, or otherwise, with respect to the IMPROVEMENTS subject of the default); and

(ii) In order to pay for the costs, expenses and/or fees incurred by CITY related to the satisfaction of such defaulted obligations, institute and prosecute appropriate legal and/or equitable actions or proceedings against DEVELOPER to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by CITY for and otherwise related to any such legal and/or equitable action or proceeding including, without limitation, establishing a municipal lien against the TRACT.

### 3. Guaranty of Completion of SECURED IMPROVEMENTS.

a. DEVELOPER shall deposit with CITY or otherwise establish the FINANCIAL SECURITY all in accordance with and pursuant to the terms and conditions of this Section 3 and the SET ASIDE LETTER. The FINANCIAL SECURITY for the Phase I Improvements shall be deposited or otherwise established in and by the time provided in the SET ASIDE LETTER. The FINANCIAL SECURITY for the Phase II Improvements shall be deposited prior to issuance of a building permit for the Office Building. Unless and until the FINANCIAL SECURITY is so deposited or otherwise established by DEVELOPER, no work towards the completion of any of the IMPROVEMENTS shall be laid out, installed or otherwise commenced, and no building, grading, occupancy or other permit, relating to the erection, placement or occupancy of any of the IMPROVEMENTS or of any buildings or other structures in, on and/or related to the SUBJECT SUBDIVISION, shall be issued by the CITY, except as already issued or authorized by City prior to execution of this Amendment.

b. The FINANCIAL SECURITY shall provide for and secure to the public, as represented by the CITY, the completion, on or before the COMPLETION DATE, of the SECURED IMPROVEMENTS in accordance with and pursuant to the terms and conditions of this Amendment, and shall further guarantee the performance of the other obligations of DEVELOPER under this Amendment and the SET ASIDE LETTER.

c. The FINANCIAL SECURITY for the Phase I Improvements shall be of such type as more fully and further provided in and by the SET ASIDE LETTER.

d. The initial amount of the FINANCIAL SECURITY for the Phase I Improvements shall be \$403,038, which is 110% of the total cost estimate as set forth in Exhibit "C" attached hereto and made fully part hereof. CITY acknowledges and agrees that the SET ASIDE LETTER satisfies DEVELOPER'S FINANCIAL SECURITY obligations hereunder with respect to the Phase I Improvements for a period of twelve (12) months following the date of this Amendment (the "First Year"). The amount of the FINANCIAL SECURITY shall be subject to such increase, adjustment and reduction as provided in and by the SET ASIDE LETTER.

e. Pursuant to the Development Agreement, DEVELOPER has deposited with the CITY as additional FINANCIAL SECURITY, the Cash Escrow, as defined in the Development Agreement. The Cash Escrow shall be "evergreen" and shall be replenished during the term of this Amendment as set forth in the Development Agreement. The Cash Escrow shall secure payment of CITY's professional fees for City Solicitor and City Engineer in conducting needed review during the development of and in connection with the IMPROVEMENTS. DEVELOPER shall receive a credit to the Cash Escrow for any cash escrow amounts previously deposited with CITY which have not been applied.

#### 4. Failure to Complete; Other Default.

In the event that any of the IMPROVEMENTS is or are not completed fully in accordance with the terms, conditions and requirements of Section 2 above, CITY, shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies, as may be available to CITY under this Amendment, the SET ASIDE LETTER, the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, and/or the MPC, and/or

otherwise at law or in equity) to: (i) enter upon the TRACT and complete all or part of the IMPROVEMENTS in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete SECURED IMPROVEMENTS, obtain payment to it, or its order, of all or any part of the FINANCIAL SECURITY and/or to otherwise enforce the FINANCIAL SECURITY in order to pay for the costs of such completion and related costs, expenses and fees.

If the proceeds of the FINANCIAL SECURITY paid to the CITY, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete IMPROVEMENTS, together with related costs, expenses and fees, CITY, at its option, shall have the right to complete part of the IMPROVEMENTS and to institute appropriate legal and/or equitable actions against DEVELOPER to recover monies necessary to complete the remainder of the incomplete IMPROVEMENTS and pay all related costs, expenses and fees including, but not limited to the following: (i) the amount that CITY shall require to fully complete the IMPROVEMENTS or otherwise fully cure the default; (ii) any other costs, expenses and fees referred to in this Amendment for which DEVELOPER is obligated and has not paid, and which are past due and/or which have been incurred by CITY; (iii) interest, at the then legal rate, on all of the foregoing amounts, costs, expenses, and fees, accruing either as of the respective payment due dates herein provided, or, if no payment due dates are so provided, as of the respective dates on which CITY incurs such amounts, costs, expenses or fees; (iv) costs of suit; and (v) attorney's fees.

5. Advancement and/or Reimbursement of Expenses.

a. DEVELOPER shall advance and/or reimburse CITY the following as provided in this Section 5:

(1) All costs, expenses and fees incurred by CITY in and for the preparation, review, orderly performance and/or enforcement of this Amendment and the SET ASIDE LETTER. Such costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the CITY's Legal Counsel; and reasonable expenses and fees of the CITY ENGINEER, other professional consultants engaged by CITY, and/or the CITY roadmaster in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.

(2) All costs, expenses and fees incurred by CITY of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under Section 2(c) hereof, including, without limitation, reasonable fees of the CITY's Legal Counsel, the CITY ENGINEER, and/or other professional consultants engaged by CITY.

(3) All administrative costs and expenses of or incurred by CITY in connection with the SUBJECT SUBDIVISION/LAND DEVELOPMENT at then-prevailing rates.

b. The FINANCIAL SECURITY shall cover inspections by the CITY ENGINEER and CITY administrative costs and expenses.

c. Subject to the dispute provisions of Section 197-80 and 197-81(E) of the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, the costs, expenses and fees, described in Subsection a. above, shall be billed by CITY to DEVELOPER, and the amounts of the same shall be due and payable within fifteen (15) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by CITY from monies deposited by DEVELOPER with and held in escrow by CITY for any such costs, expenses or fees. To the extent that a dispute arises over the fees for the review of plans or inspection fees and the DEVELOPER and the CITY cannot agree on the amount of expenses which are reasonable and necessary within twenty (20) days from the date of the billing, any arbitrator appointed under Section 197-81(E) of the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE shall be of the same profession as the professional consultant whose fees are being challenged. The failure of the DEVELOPER to dispute any review or inspection fees within the time period prescribed in Section 197-81(E) of the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE shall be a waiver of the DEVELOPER's right to contest the same.

d. CITY, under and in accordance with the SET ASIDE LETTER, shall have the right to recover, from and under the FINANCIAL SECURITY, the costs, expenses and fees, described in Subsection a. above, notwithstanding that the amount of the SET ASIDE LETTER, but for this Subsection d., is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter available to CITY under this Amendment, the SET ASIDE LETTER, the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, and/or the MPC, and/or otherwise at law or in equity.

e. It is expressly acknowledged and agreed that CITY shall not be obligated hereunder or otherwise to finally release DEVELOPER from and under the FINANCIAL SECURITY, the SET ASIDE LETTER, or any other financial security provided pursuant hereto, and/or to accept dedication (or other transfer or assignment) of any of the items under Section 2(c) hereof, unless and until all the aforesaid costs, expenses and fees are paid in full.

## 6. Indemnification.

a. DEVELOPER and Coatesville Inn, LLC hereby agree to indemnify and save harmless CITY, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the IMPROVEMENTS, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by CITY in connection with any such liability, claim, suit or demand, except for the willful misconduct or gross negligence of the City, its officials, officers, employees or agents and their respective employees and agents.

b. The indemnification, save harmless and defense provisions of Subsection a. shall not apply to any claims, suits or demands arising, from, out of, or related to the repair and/or maintenance of (or the failure to repair and/or maintain) of any IMPROVEMENTS, the dedication (or other transfer or assignment) of which has been offered to and accepted by CITY

or other third party, which repair and/or maintenance (or the failure thereof) occurs in whole after the time when CITY's or such third party's acceptance of the offer of dedication becomes final and effective.

7. Notices.

a. Any notice, demand or other communication required, authorized or permitted to be given under this Amendment shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

b. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, at the time of deposit in the United States mails.

8. Miscellaneous.

a. Waiver. Neither the failure nor any delay on the part of CITY to exercise any right, remedy, power, or privilege granted under this Amendment or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against CITY unless it is in writing signed by a duly authorized representative of CITY.

b. Assignment; Delegation. DEVELOPER shall have the right to assign this Amendment to a lender or lenders as security for a loan without the consent of CITY but with notice to the City of such assignment. Except as permitted in the preceding sentence, DEVELOPER shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of CITY, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation, without such consent, shall be void. No assignment permitted or consented to hereunder shall in any way waive or modify the SET ASIDE LETTER required by this Amendment.

c. Cumulative Rights and Remedies. Any and all rights, powers, privileges and/or remedies granted or accruing to CITY under or pursuant to this Amendment and/or the SET ASIDE LETTER shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to CITY under the SUBDIVISION AND LAND DEVELOPMENT ORDINANCE and/or the MPC, and/or otherwise at law or in equity.

d. Headings. The captions or headings preceding the text of the several sections and subsections of this Amendment are inserted solely for convenience of reference; they shall neither constitute a part of this Amendment nor affect its meaning, construction or effect.

e. Severability. If any provision on this Amendment is held to be invalid or unenforceable: (i) the remaining provisions of this Amendment shall not be affected thereby, but shall continue in full force and effect; (ii) this Amendment be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

f. Binding Effect. Subject to Subsection b. above, this Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

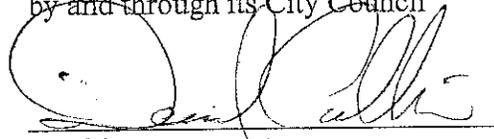
g. Entire Amendment; Amendment. This Amendment, together with the exhibits attached hereto and made part hereof and the SET ASIDE LETTER, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Amendment may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

h. Reasonable Costs. All provisions of this Amendment that require DEVELOPER to pay costs, fees or expenses on behalf of the City shall only require payment of reasonable costs, fees or expenses.

i. Counterparts. This Amendment may be signed in counterparts with the same effect as if all signatories had executed the same instrument.

IN WITNESS WHEREOF, the parties hereunto have executed this Amendment as of the day and year first above written.

CITY OF COATESVILLE,  
by and through its City Council

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
City Secretary

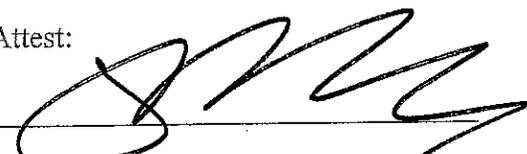
DEVELOPER:

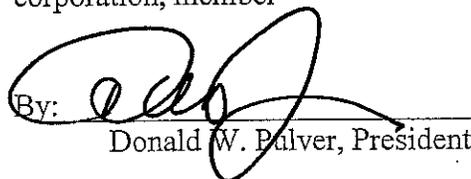
COATESVILLE INN ASSOCIATES

By: COATESVILLE INN, LLC, a Pennsylvania  
limited liability company, general partner

By: OLIVER COATESVILLE INN  
CORPORATION, Pennsylvania  
corporation, member

Attest:

  
\_\_\_\_\_  
Ross Weiss

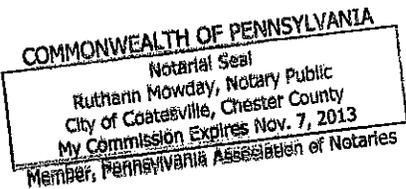
By:   
\_\_\_\_\_  
Donald W. Pulver, President

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :  
 : §§  
COUNTY OF :

On this 10 day of April, 2013, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared David Collins, acknowledged him/her self to be President of the CITY OF COATESVILLE City Council, and that he/she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand an official seal the day and year aforesaid.



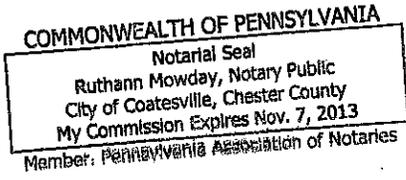
Ruthann Mowday  
Notary Public

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :  
 : §§  
COUNTY OF :

On this 8 day of April, 2013, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Donald Pulver, who acknowledged himself to be the President of Oliver Coatesville Inn Corporation, a Pennsylvania corporation, and member of Coatesville Inn, LLC, a Pennsylvania limited liability company, and general partner of Coatesville Inn Associates, a Pennsylvania limited partnership, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.



Ruthann Mowday  
Notary Public

EXHIBIT "A"

The "Overall Land Development Plan" prepared by D.L. Howell & Associates, Inc. dated, June 24, 2011, with a last date of revision identified as April 5, 2013, referencing "Courtyard Hotel/Office Parking and Basin Conversion."

EXHIBIT "B"

SPECIAL TERMS AND CONDITIONS

A. DEVELOPER hereby acknowledges and agrees to fully comply with and otherwise satisfy (or to cause the full compliance with or other satisfaction of) all conditions to the grant of final plan approval of the PLANS, which conditions are set forth in Resolutions Number \_\_\_\_\_ adopted by the City Council of CITY, to the extent that such conditions, as of the date of this Amendment, have not been fully complied with or otherwise satisfied.

B. DEVELOPER hereby further acknowledges and agrees that:

(1) The current record owner of the air rights on the TRACT is Coatesville Inn Associates (hereafter "DEVELOPER"), and the current record owner of the ground rights on the TRACT is the Redevelopment Authority of the City of Coatesville; and

(2) DEVELOPER has obtained permission from the Redevelopment Authority of the City of Coatesville, by virtue of that certain Easement Agreement and Declaration of Covenants recorded in the Office of the Chester County Recorder of Deeds in Deed Book 7769, Page 764, a copy of which has been provided to the City, to (i) construct, install and/or otherwise complete the IMPROVEMENTS, including but not limited to the SECURED IMPROVEMENTS, on, under and/or through all portions of the TRACT, all as contemplated by and in accordance with the PLANS and this Amendment, and (ii) take all such other actions on, in, or otherwise with respect to all portions of the TRACT in order to fully comply with and satisfy all obligations and duties of DEVELOPER under this Amendment and the SET ASIDE LETTER.

EXHIBIT "C"

TOTAL COST ESTIMATE

PHASE I IMPROVEMENTS

<u>ITEM DESCRIPTION</u>	<u>QT</u> <u>Y</u>	<u>UNI</u> <u>I</u>	<u>UNIT \$</u>	<u>SUBTOTAL</u> <u>LS</u>	<u>TOTALS</u>
Layout & Survey	1	LS	\$	\$	
			8,880.00	<u>8,880.00</u>	
<b>Subtotal</b>					<b>\$</b> <b>8,880.00</b>
<b>Demolition</b>					
remove existing concrete curb	35	LF	\$	\$	
			5.80	203.00	
remove interim parking lot	660	SY	\$	\$	
			6.90	<u>4,554.00</u>	
<b>Subtotal</b>					<b>\$</b> <b>4,757.00</b>
<b>Erosion Control</b>					
construction entrances	2	EA	\$	\$	
			1,330.00	2,660.00	
temporary stockpile protection	1	LS	\$	\$	
			2,000.00	2,000.00	
super silt fence	385	LF	\$	\$	
			9.80	3,773.00	
inlet protection	10	EA	\$	\$	
			230.00	2,300.00	
erosion control matting	9,3	SF	\$	\$	
	20		0.20	<u>1,864.00</u>	
<b>Subtotal</b>					<b>\$</b> <b>12,597.00</b>
<b>Earthwork</b>					
strip topsoil	1,2	CY	\$	\$	
	00		2.00	2,400.00	
cut	4,5	CY	\$	\$	
	80		12.10	55,418.00	
fill	1,0	CY	\$	\$	
	48		-	-	
excavate & backfill for curb	2,4	LF	\$	\$	
	30		2.90	7,047.00	
finish grade @ paved areas	69,	SF	\$	\$	
	980		0.15	10,497.00	
export excess topsoil	850	CY	\$	\$	
			7.00	5,950.00	
replace topsoil (6" deep)	350	CY	\$	\$	
			10.50	<u>3,675.00</u>	
<b>Subtotal</b>					<b>\$</b> <b>84,987.00</b>
<b>Storm Sewer</b>					
type C inlets (0-5 vertical ft.)	3	EA	\$	\$	
			1,800.00	5,400.00	
remove & replace inlet with type M	1	EA	\$	\$	

15" RCP	233	LF	1,930.00	1,930.00	
			\$	\$	
lower storm pipe in front of hotel	176	LF	32.00	7,456.00	
			\$	\$	
			61.00	<u>10,736.00</u>	
<b>Subtotal</b>					\$
					<b>25,522.00</b>
<b>Concrete Work</b>					
Vertical curbs	2,4	LF	\$	\$	
	30		16.00	38,880.00	
sidewalk	150	SF	\$	\$	
			14.00	2,100.00	
dumpster pad	280	SF	\$	\$	
			20.00	5,600.00	
<b>Subtotal</b>					\$
					<b>46,580.00</b>
<b>Stone &amp; Paving</b>					
8" 2A modified @ north side parking lot	3,1	SY	\$	\$	
	66		7.50	23,745.00	
8" 2A modified @ south side parking lot	4,6	SY	\$	\$	
	10		7.50	34,575.00	
2" ID-2 binder course @ north side parking lot	3,1	SY	\$	\$	
	66		12.00	37,992.00	
1-1/2" ID-2 wearing course @ north side parking lot	3,1	SY	\$	\$	
	66		9.50	30,077.00	
seal curb @ north side parking lot	1,0	LF	\$	\$	
	60		0.60	636.00	
line striping @ north parking lot	1	LS	\$	\$	
			1,000.00	1,000.00	
<b>Subtotal</b>					\$
					<b>128,025.00</b>
<b>Site Lighting</b>					
Site Lighting @ north parking lot (complete)	1	LS	\$	\$	
			16,000.0	16,000.00	
			0		
Site Lighting @ south parking lot (pole bases & conduit)	1	LS	\$	\$	
			6,775.00	6,775.00	
<b>Subtotal</b>					\$
					<b>22,775.00</b>
<b>Landscaping</b>					
landscaping & seeding	1	LS	\$	\$	
			32,275.0	<u>32,275.00</u>	
			0		
<b>Subtotal</b>					\$
					<b>32,275.00</b>
<b>GRAND TOTAL</b>					\$
					<b><u>366,398.00</u></b>

**PHASE II IMPROVEMENTS**

<u>ITEM DESCRIPTION</u>	<u>QT</u> <u>Y</u>	<u>UNI</u> <u>I</u>	<u>UNIT \$</u>	<u>SUBTOTA</u> <u>LS</u>	<u>TOTALS</u>
2" ID-2 binder course @ south side parking lot	4,6 10	SY	NIC	NIC	
seal curb @ south side parking lot	1,3 70	LF	NIC	NIC	
line striping @ south parking lot	NIC	LS	NIC	NIC	

Phase II Security will be approved by City prior to the date the security must be posted.

EXHIBIT "D"

SET ASIDE LETTER