

December 6, 2010

1  
2 **MUTUAL AGREEMENT & RELEASE**  
3

4 This Mutual Agreement & Release (the “Agreement”), is made and entered into as of this  
5 6th day of December, 2010, by and between Dewey Beach Enterprises, Inc., successors and  
6 assigns, (“DBE”), Ruddertowne Redevelopment, Inc., successors and assigns, (“RR”) and the Town  
7 of Dewey Beach, Delaware (“Dewey Beach” or the “Town”).

8 A. DBE owns three contiguous parcels of land in Dewey Beach, zoned for commercial  
9 and/or structures of commercial and mixed uses, and these parcels encompass at least 80,000 square  
10 feet of land (the “Property” or “Ruddertowne”);  
11

12 B. DBE, RR and Dewey Beach, including Commissioner Diane Hanson, former  
13 Commissioners Richard Hanewinkel and Dell Tush, David King, a member of Planning & Zoning,  
14 and the Town Board of Adjustment (collectively, “The Town”) are involved in civil matters filed by  
15 DBE against the Town over the use of the Property, including the following matters, (collectively,  
16 the “Litigation”):  
17

18 (1) Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v.  
19 Town of Dewey Beach, Dell Tush, David King, Diane Hanson and Richard  
20 Hanewinkel, C.A. No. 09-507 (GMS).  
21

22 (2) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of  
23 Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinkel, Diane Hanson  
24 and Marty Seitz, C.A. No. 4426-VCN.  
25

26 (3) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of  
27 Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson,  
28 James Przygocki, and Marty Seitz, C.A. No. 5833-VCN.  
29

30 (4) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of  
31 Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson,  
32 James Przygocki, and Marty Seitz, C.A. No. 4991-VCN.  
33

34 (5) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of  
35 Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson,  
36 James Przygocki, and Marty Seitz, C.A. No. 5711.  
37

38 C. DBE, RR and the Town desire to resolve the Litigation through the Town’s  
39 recognition that DBE filed a building permit application on April 4, 2008 for the redevelopment of  
40 Ruddertowne (hereinafter “building permit”) following the adoption of the Dewey Beach  
41 Comprehensive Plan (hereinafter “Comprehensive Plan); and prior to the adoption of the amended  
42 Dewey Beach Zoning Code;  
43

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44           **NOW**, therefore, in the interest of resolving and settling the Litigation, the parties hereto  
45 agree as follows:

46  
47           (1) DBE shall be permitted to construct a structure (hereinafter “Structure”) of mixed  
48 commercial and residential uses under its zoning applicable to its contiguous tracts consisting  
49 of at least 80,000 square feet as follows:

50  
51           Hotel and Condominium Unit Density:

- 52
- 53           a. Maximum 120 residential condominium units (20 of which could be made available  
54 for hotel use by DBE),
  - 55
  - 56           b. The ground (first floor) shall be comprised of any retail/service type uses as permitted  
57 by applicable laws (e.g., spa, gym, restaurant, public attractions, ice-skating rink,  
58 bowling alley, parking and hotel).
  - 59
  - 60           c. For every six hotel units up to the maximum permitted of 90 units, the number of  
61 maximum condo units shall reduce by one. Thereby allowing the total number of  
62 combined residential units and commercial hotel units (if the maximum number of  
63 hotel units being 90 is utilized) to be 90 hotel units and 105 residential condominium  
64 units.
  - 65

66           (2) Height: Height shall be defined as the vertical distance from grade elevation to the  
67 highest point of the Structure. Grade elevation shall be the elevation of the crown of U.S.  
68 Route 1 abutting the center of the parcel. **The height of the Structure shall not exceed**  
69 **45.67 feet.** Except as specifically provided in this Agreement, DBE and RR voluntarily  
70 agree to not seek any additional Structure height above 45.67 feet from the Town, a court, or  
71 any other governmental or private entity, and voluntarily agrees to enter into a deed  
72 restriction limiting Structure height to 45.67 feet, and further prohibiting any owner or  
73 owner’s agent from pursuing increased height unless the zoning laws of the Town then in  
74 effect and applicable to the Structure permit a Structure height in excess of 45.67 feet  
75 measured as described in this paragraph. Exceptions to the 45.67 feet height limitation  
76 include all chimneys and stand pipes required to comply with fire code, but they shall not  
77 exceed 24 inches above the 45.67 feet height limitation. Additional exceptions to the 45.67  
78 feet height limitation include elevator bulkheads where required for safety, and air handling  
79 systems (appropriately screened) and alternative energy system when appropriately set back  
80 from roof edges so as not to be visible from the street. Elevator bulkheads, air handling  
81 systems and alternative energy systems shall not exceed 42 inches above the 45.67 feet  
82 height limitation.

83

- 84           (a) The structure shall be limited to a parking level at or below current grade and four  
85 floors above the parking level. The finished floor elevation of the lowest floor shall be  
86 elevated to a height that is at least one foot above the base flood elevation.
- 87

88           (3) Voluntary Amenities Provided By DBE:

89

**“Confidential and subject to Delaware Rule of Evidence 408”**

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- 90 a. Convention Center of at least 5,000 square feet (contingent upon hotel use being  
91 established by DBE).  
92
- 93 b. Dedicated 1<sup>st</sup> floor town space (“Town Space”) of at least 3,000 square feet dedicated  
94 to the Town for purposes to be determined by the Town.  
95
- 96 c. Bay Walk serving as a continuous exterior walkway from Van Dyke Avenue to  
97 Dickinson Avenue along the Rehoboth Bay that may be publicly accessed without  
98 restriction at all times (this may include space currently, or in the future, licensed for  
99 use by the restaurants as well). The Bay Walk shall be 12 feet or more in width, and  
100 shall be compliant with the Americans with Disabilities Act. Subject to DNREC  
101 approval, the Bay Walk shall include a Gazebo 500 square feet in size with seating,  
102 which shall serve as a focal point along the Bay Walk. If DBE and the Town cannot  
103 obtain DNREC approval for a 500 foot Gazebo, DBE agrees to construct a 250 square  
104 foot Gazebo at a location not regulated by DRNEC. The Bay Walk shall be  
105 maintained by DBE. The existing beach frontage along Que Pasa and the jet ski  
106 rental location shall serve as the Bay Walk along this area of the DBE property, and  
107 shall be no less than 12 feet in width. DBE shall not install any fixed tables or fixed  
108 seating in the Bay Walk, and the entire width and length of the Bay Walk shall  
109 remain unobstructed, walkable, and accessible by the public at all times. The Town  
110 shall assist and otherwise act in good faith with DBE in obtaining DNREC approval  
111 for the Bay Walk (including the Gazebo) from DNREC. In the event DNREC  
112 approval cannot be obtained in whole or in part, DBE shall complete construction of  
113 the Bay Walk in the area closest to the Bay not requiring DNREC approval. The Bay  
114 Walk shall be constructed prior to the issuance of the Certificate of Occupancy for the  
115 main structure.  
116
- 117 d. The rooftop shall be accessible to the public by way of a pool/café or some other  
118 approved-by-the-Town and voluntarily-agreed-upon attraction, which will be owned  
119 and operated by DBE. Any such attraction must be approved by the Town  
120 Commissioners with the recommendation of the Planning Commission. Any  
121 accessory item approved by the Town and necessary to create this attraction shall not  
122 be included in the height limitations contained in Paragraph 2 (e.g.,  
123 railings/canopies).
- 124 e. DBE voluntarily agrees to establish median parking spaces contiguous to its building  
125 on the north end at its cost and subject to Town approval. All such parking shall be  
126 included in DBE’s building permit parking calculation, but shall be owned and  
127 controlled by the Town. DBE agrees to construct the median parking spaces prior to  
128 Memorial Day 2011.
- 129 f. A minimum of 85 publically accessible parking spaces within the main complex,  
130 which shall be subject to charge by DBE at a rate equal to or higher than the rate

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131 charged by the Town, and a minimum of 15 parking spaces within the main complex,  
132 dedicated as parking spaces for Town use at no charge to the Town.  
133

134 g. DBE voluntarily agrees to provide a total 500 square feet dedicated to public  
135 restrooms.

136 (4) DBE voluntarily agrees to post a performance bond(s) for any and all  
137 infrastructure improvements for the project, including sewer, water, electric, stormwater, and  
138 roadways (including associated sidewalks). The performance bond shall be in an amount  
139 equal to 100 % of the cost to construct the infrastructure as certified by a Delaware  
140 Professional Engineer, and shall be in a form generally accepted in Delaware by zoning  
141 authorities with specific details to be finalized by DBE and the Dewey Beach Town  
142 Manager, subject to legal approval as to legal form by the Dewey Beach Town Solicitor.  
143 Upon certification that the infrastructure improvements are complete and in good repair, the  
144 Town Manager shall release the bond(s) and accept the improvements. The Town Manager  
145 shall establish a bond schedule with DBE and provide for reasonable partial releases as each  
146 specific infrastructure item is completed by DBE.  
147

148 (5) This project structure of mixed commercial and residential use shall be subject to  
149 the mixed use provisions of the former Dewey Beach Zoning Code and Comprehensive  
150 Development Plan, taking into account the dates of DBE’s building permit application.  
151

152 (6) Building permit fees shall be applicable.  
153

154 (7) The Code of the Town of Dewey Beach establishes that building permits shall be  
155 valid for one year from date of issue, and may be renewed one time for one additional year  
156 for a fee of \$50, provided renewal is applied for prior to expiration date. In extraordinary  
157 circumstances, an additional renewal may be allowed subject to Commissioners’ approval.  
158 Due to the lot size of the Property proposed for redevelopment by DBE and Comprehensive  
159 Development Plan language to that effect, any building permit issued pursuant to Paragraph 8  
160 below shall be valid for three (3) years from date of issue and may be renewed two times for  
161 one additional year each for a fee of \$50.00, provided renewal is applied for prior to  
162 expiration date. An additional one year renewal may be allowed subject to Town  
163 Commissioners’ approval.  
164

165 (8) Plan & Building Permit Approval Process:  
166

167 a. The process shall include: (i) execution of this Agreement by the Town  
168 Manager; (ii) review of this Agreement by the Town Commissioners in Executive Session for  
169 legal advice and, based upon the legal standards applicable to DBE in light of the date of its  
170 Building Permit application, discuss what the Town Commissioners believe may be the  
171 appropriate standards applicable to DBE’s pending (iii) three (3) public workshops to explain  
172 DBE’s proposed structure and amenities to the public (DBE shall prepare and make available  
173 for advance inspection by the Town Commissioners renderings of sufficient size, quality, and

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174 quantity to be presented at the public workshops and to fairly represent to the Town  
175 Commissioners and interested public the proposed Structure and surrounding development); (iv)  
176 a public hearing held by the Town Commission to take public testimony regarding DBE’s plan  
177 and pending building permit application (“Hearing One”); (v) a Special Town Meeting  
178 immediately following such public testimony to approve or deny the plan and building permit  
179 application by a majority vote based upon applicable law given the date of DBE’s building  
180 permit (hereinafter “Special Town Meeting”) (During the Special Town Meeting the  
181 Ruddertowne Architectural Committee’s (RAC) recommendation and report to the Town  
182 Commission (“RAC Recommendation”) shall be considered by the Town Commission, and the  
183 Town Commission’s vote, if positive, shall also include a ratification of the RAC  
184 Recommendation as may be specifically modified by the Town Commission); (vi) at the Special  
185 Town Meeting, if approval is granted, the Ruddertowne Redevelopment Project shall be referred  
186 to the Planning Commission and DBE shall provide final construction plans for review to the  
187 Planning Commission. Review of final construction plans by the Planning Commission shall be  
188 for the sole purpose of: (1) making a recommendation to the Town Commission as to whether  
189 the final construction plans are consistent with the Town Commission’s plan and building permit  
190 approval at the Special Town Meeting, (2) making a recommendation to the Town Commission  
191 regarding the Rooftop Uses at Ruddertowne, (3) making a recommendation regarding the use of  
192 the voluntarily dedicated Town Space; and (4) making a recommendation regarding the Gazebo;  
193 (vii) a final public hearing (“Hearing Two”) by the Town Commissioners to review the Planning  
194 Commission’s recommendations provided for herein and make a final decision regarding  
195 whether the final construction plans satisfy the conditions of the approved plan and building  
196 permit and the voluntarily amenities (or other voluntary assurances) agreed to by DBE at the  
197 Special Town Meeting. If the final construction plans are consistent with the Special Town  
198 Meeting approval of the plan and building permit granted by the Town Commissioners and  
199 representations of DBE made at the public hearings provided for herein, the Town Commission,  
200 after consideration of the recommendations of the Planning Commission provided for herein,  
201 shall grant all final Town approvals by a majority vote. At Hearing Two the Town Commission  
202 shall also make a final decision regarding DBE’s Permitted Rooftop Uses, if any, the location  
203 and size of the Gazebo (not to exceed the maximum size provided for in Paragraph 3(c) herein),  
204 and the uses within the Town Space. Upon final approval DBE’s plan shall than be recorded as a  
205 matter of public record.

206           b. Schedule. Provided that weather conditions permit, a quorum is available,  
207 meeting space is available, and the proper public notice has been provided, the schedule shall be:

208                   (i)     Prior to December 11, 2010 -- execution of this Agreement by the  
209                   Town Manager, DBE and RR

210                   (ii)    December 11, 2010 -- review of this Agreement by the Town  
211                   Commissioners in Executive Session for legal advice and, based upon the legal

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212 standards applicable to DBE in light of the date of its building permit application,  
213 discuss what the Commission believes may be the appropriate standards  
214 applicable to DBE’s pending application. Announce to the public that this  
215 Agreement has been executed and is contingent upon approval by the Town  
216 Commission . After the announcement, correspondence providing public  
217 workshop dates shall be prepared and sent to the public;

218 (iii) January 8, 2011, at 2:00 pm – First public workshop

219 January 15, 2011, at 10:00 am – Second public workshop

220 January 20, 2011, at 6:00 pm – Third public workshop

221 (iv) February 5, 2011 (Hearing One)-- public hearing held by the Town  
222 Commission to take public testimony regarding DBE’s proposed Structure, surrounding  
223 development, and pending building permit application. This date shall also serve as a  
224 make up date for any public workshop that may not have been held as provided above. In  
225 such a case, the workshop shall be held prior to the public hearing;

226 (v) February 5, 2011 – (Special Town Meeting) A Special Town  
227 Meeting immediately following the February 5, 2011 public hearing to approve or deny  
228 DBE’s proposed Structure, surrounding development, plan and building permit  
229 application. The building permit approval shall be subject to the Building Official’s  
230 recommendation to the Town Commissioners as to compliance with applicable sections  
231 of the Dewey Beach Code and Comprehensive Plan. If the Town Commission approves  
232 DBE’s plan and building permit, the Town Commission shall refer the matter to the  
233 Planning Commission for a recommendation to the Town Commissioners regarding the  
234 proposed Gazebo, Bay Walk, Public Space Uses and Roof Top Uses. The Planning  
235 Commission shall also make a recommendation as to whether the construction plans are  
236 consistent with the application presented by DBE at the Special Town Meeting.

237 (vi) February 25, 2011, (Hearing Two) Town Meeting to accept or  
238 reject, in whole or in part, the Planning Commissions’ recommendations regarding the  
239 consistency of the construction plans with the application presented at the Special Town  
240 meeting by DBE, the Gazebo, the Bay Walk, the Public Space Uses and the Roof Top  
241 Uses. A final decision as to the Gazebo, Bay Walk, Public Space Uses and Roof Top  
242 Uses shall be made at this meeting. This final hearing shall be held on or before March  
243 15, 2011.

244 (9) No Gambling. DBE voluntarily agrees to prohibit all gambling upon the property  
245 in perpetuity through a recorded covenant for the Town’s benefit.

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246 (10) This Agreement shall be binding upon the parties to this agreement, their successors  
247 and assigns.

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252 (11) RELEASE BY DBE AND RR

253 (a) Upon approval of DBE’s plan and building permit and the expiration of  
254 applicable appeal periods , DBE and RR do hereby release, remise, acquit and forever discharge the  
255 Town and its principals, agents, partners, employees, servants, heirs, executors, administrators,  
256 attorneys, successors, affiliates, insurers, predecessors-in-interests and all other persons, firms,  
257 corporations, associations or partnerships with which it may be associated, of and from all, and all  
258 manner of, past or present claims, demands, actions and causes of action, debts, dues, sums of  
259 money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
260 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
261 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
262 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
263 both to person and property, which have resulted from their relationship with Dewey Beach and/or  
264 any of its predecessors interests which are, or could have been, the subject of any litigation and  
265 against the Town which DBE has ever had, now has, or which their executors, administrators,  
266 successors or assigns, or any of them, hereafter can, shall or may have, for or by reason of any  
267 matter, cause or thing whatsoever, from the beginning to the end of the world. However, this  
268 release does not apply to any future wrongs that may be committed against DBE or RR by Dewey  
269 Beach, its principals, agents, partners, employees, servants, heirs, executors, administrators,  
270 attorneys, successors, affiliates, predecessors interests and all other persons, firms, corporations,  
271 associations or partnerships with which they may be associated.

272 (b) It is expressly understood and agreed that this Release is being executed for the  
273 express purpose of precluding forever any further or additional claims, demands, damages, actions,  
274 causes of action or suit of any kind or nature by DBE or RR against the Town arising out of any  
275 action previously taken by the Town or any of its predecessors-in-interests in connection with any  
276 of DBE’s or RR’s dealings with the Town.

277 (c) DBE and RR hereby further declare and represent that no promises,  
278 inducements, representations or agreements not expressly stated herein have been made to them  
279 except as set forth herein, and that this Release contains the entire agreement between them and the  
280 Town in regard to the Release, and that the terms of this Release are contractual, and not merely a  
281 recital.

282 (d) Upon approval of this Agreement by the Town Council of Dewey Beach, all  
283 Defendants named in their personal capacities in the Litigation shall have fifteen (15) days to

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284 execute the applicable release attached hereto as Exhibit A. DBE and RR shall execute the  
285 applicable release for each Defendant named in their personal capacities in the Litigation that  
286 executes the applicable release.

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288

289 (12) RELEASE BY THE TOWN

290 (a) Upon approval of DBE’s plan and building permit and the expiration of  
291 applicable appeal periods, the Town does hereby release, remise, acquit and forever discharge DBE  
292 and RR, and their principals, agents, partners, employees, servants, heirs, executors, administrators,  
293 attorneys, successors, affiliates, insurers, predecessors-in-interests and all other persons, firms,  
294 corporations, associations or partnerships with which it may be associated, of and from all, and all  
295 manner of, past or present claims, demands, actions and causes of action, debts, dues, sums of  
296 money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
297 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
298 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
299 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
300 both to person and property, which have resulted from their relationship with DBE and/or any of its  
301 predecessors interests which are, or could have been, the subject of any litigation against DBE or  
302 RR which the Town ever had, now has, or which their executors, administrators, successors or  
303 assigns, or any of them, hereafter can, shall or may have, for or by reason of any matter, cause or  
304 thing whatsoever, from the beginning to the end of the world. However, this release does not apply  
305 to any future wrongs that may be committed against Dewey Beach by DBE or RR, its principals,  
306 agents, partners, employees, servants, heirs, executors, administrators, attorneys, successors,  
307 affiliates, predecessors interests and all other persons, firms, corporations, associations or  
308 partnerships with which it may be associated.

309 (b). It is expressly understood and agreed that this Release is being executed for  
310 the express purpose of precluding forever any further or additional claims, demands, damages,  
311 actions, causes of action or suit of any kind or nature by the Town against DBE or RR arising out of  
312 any action previously taken by DBE or RR or any of their predecessors-in-interests in connection  
313 with any of the Town’s dealings with DBE or RR.

314 (c) Dewey Beach hereby further declares and represents that no promises,  
315 inducements, representations or agreements not expressly stated herein have been made to them  
316 except as set forth herein, and that this Release contains the entire agreement between it and DBE  
317 and RR in regard to the Release, and that the terms of this Release are contractual, and not merely a  
318 recital.

319 (13) **VOLUNTARY INDEMNIFICATION BY DBE**

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320 DBE shall indemnify, defend and hold the Town harmless against claims brought  
321 against the Town, its commissioners, officers or employees by any third party to the extent those  
322 claims are based upon allegations related to the approved building permit and plan contemplated  
323 herein for DBE's Ruddertowne redevelopment project. Indemnified claims must touch and  
324 concern DBE's Ruddertowne redevelopment project building permit or plan, or, if otherwise  
325 successful, could halt or alter DBE's Ruddertowne redevelopment Town-approved permit or  
326 plans. The foregoing obligations are conditioned upon: (a) prompt written notice by the Town  
327 to DBE of any claim, action or demand for which indemnity is claimed; (b) final decisions  
328 regarding defense strategy and settlement thereof by DBE, including the choice of the lawyer or  
329 law firm providing representation, provided that no settlement of an indemnified claim shall be  
330 made without the consent of the Town, such consent not to be unreasonably withheld or delayed;  
331 and (c) non-financial cooperation by the Town in the defense as DBE may request. For purposes  
332 of this section, "Claims" means losses, actions, liabilities, damages, expenses (including  
333 attorney's fees) and court costs.

334

335 (14) **CONTROLLING LAW**

336 This Agreement is governed by the laws of the State of Delaware, and any action relating to  
337 it shall solely be brought in the State of Delaware.

338 (15) **ADVICE OF COUNSEL**

339 This Agreement is entered into by all parties freely, with their full consent, under no duress  
340 or undue influence, with the parties having been fully informed of all provisions of this Agreement  
341 and with the intent to be fully bound by it. All parties expressly acknowledge that they have had a  
342 full and ample opportunity to receive the advice of counsel with respect to the negotiation and  
343 execution of this Agreement, and that they fully understand the terms and conditions of this  
344 Agreement.

345 (16) **ENTIRE UNDERSTANDING**

346 This Agreement contains the entire understanding between the parties hereto and no party  
347 hereto shall be bound or liable in any way for any other representation, undertaking, warranty,  
348 assurance or promise expressed or implied except as fully set forth herein.

349 (17) **MISCELLANEOUS**

350 (a) Time is of the essence in connection with any act, undertaking or matter to be performed  
351 under this Agreement.

352 (b) Should any section or provision of this Agreement be held void or unenforceable, such  
353 unenforceability shall not affect the validity of the remaining provisions of this Agreement.

354 (c) This Agreement may not be modified, revised, altered, amended, or terminated except  
355 by a writing executed by all of the parties hereto.

**“Confidential and subject to Delaware Rule of Evidence 408”**

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356 (d) This Agreement is intended by the parties to be their final expression of their  
357 agreement with respect to the subject matter hereof, and is intended as a complete and exclusive  
358 statement thereof.

359 (e) The covenants, conditions, representations, and warranties set forth in this Agreement  
360 shall survive the execution and delivery of this Agreement.

361 (f) This Agreement may be executed in counterparts.

362 (g) This Agreement is intended to be executed under seal, and is assignable.

363 (h) All zoning related approvals provided for in this Agreement are strictly subject to  
364 approval by the Town Commissioners as contemplated herein, and the Town Manager’s  
365 signature shall not be a substitute for any such zoning approvals that must be obtained by DBE  
366 pursuant to the terms of this Agreement. If such zoning approvals are not obtained pursuant to  
367 Paragraph 8 of this Agreement, this Agreement shall be of no force or effect.

368 (i) If final approval by the Town is granted, subject to the provisions of Paragraph 8 of this  
369 Agreement, this Agreement shall be made part of a consent order filed with a Delaware and federal  
370 court. All Litigation shall be dismissed with prejudice as permitted by court rules subject to the  
371 expiration of any applicable appeal periods regarding the building permit and final Town approval  
372 of the Ruddertowne project as contemplated in this Agreement, and all other terms and conditions  
373 of this Agreement. In the event that any individual defendant in the Litigation named in his or her  
374 personal capacities refuses to execute the Release, DBE reserves the right to continue in such  
375 Litigation against the individual defendant(s) only. In the event of an appeal, all dismissals shall be  
376 subject to the final result of any such appeal, and in the case of any successful appeal no final  
377 dismissal of any Litigation shall occur. Any waivers necessary by either party that may be needed  
378 to satisfy this Paragraph shall not be withheld. If a Town Commission approval and final approval  
379 of a plan and a building permit being issued under the terms and conditions of this Agreement is not  
380 obtained as contemplated herein, then DBE reserves the right to terminate this Agreement in full  
381 and it shall thereafter have no legal force or effect as to either party whatsoever.

382 (j) Breach of agreement. In the event of a breach of this Agreement by any party, the non  
383 breaching party shall be entitled to all remedies at law and in equity. The prevailing party shall be  
384 entitled to recover all costs and all reasonable attorneys’ fees. If an appeal is filed by either party,  
385 such costs and reasonable attorneys’ fees shall not be due until the appellate process is final.

386 (k) This Agreement shall also incorporate by reference the letter sent to DBE by William  
387 Mears on October 29, 2010, confirming the revised date that a building permit must be obtained by  
388 DBE for the Property. If final approval is obtained by DBE, the approved building permit for the  
389 entire project shall be extendable as provided in Paragraph 7. The date by which DBE is required  
390 to obtain its building permit is hereby extended to and including the seventh business day following  
391 final approval, as provided in Paragraph 8 of this Agreement.

392  
393 (l) No Vested Rights. The Parties agree that time and money expended in pursuit of the plans  
394 and renderings contemplated by this Agreement cannot be used to support any vested rights, or equitable  
395 estoppel claim in the Litigation or any future litigation, and nothing in this Agreement shall be construed  
396 to provide DBE any vested rights to develop the Ruddertowne redevelopment project. This paragraph

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397 17(l) shall survive termination of this Agreement. Further, the releases provided for in this Agreement  
398 (and attached hereto) shall be held in escrow and shall only become enforceable upon the Town’s  
399 approval of DBE’s plan, the Town’s issuance of the building permit to DBE as contemplated herein,  
400 and the expiration of any applicable appeal periods.

401 (m) **WITH THE EXCEPTION OF THE PLAN & BUILDING PERMIT APPROVAL**  
402 **PROCESS PROVIDED IN PARAGRAPH 8 OF THIS AGREEMENT, WHICH SHALL BE**  
403 **IMPLEMENTED UPON THE EXECUTION OF THIS AGREEMENT BY THE DEWEY**  
404 **BEACH TOWN MANAGER, THIS AGREEMENT IS EXPRESSLY CONDITIONED**  
405 **UPON ITS APPROVAL BY A MAJORITY VOTE OF THE DEWEY BEACH TOWN**  
406 **COUNCIL.**

407  
408 (n) In the event the Dewey Beach Town Commission does not approve DBE’s plan and  
409 issue DBE a building permit, or in the event such approvals are reversed in whole or in part by a  
410 court, nothing in this Agreement shall be admissible against either party in regard to the pending  
411 Litigation or any future litigation, provided, however, that paragraph 17(l) shall remain in effect.  
412 Furthermore, in the event the Dewey Beach Town Commission does not approve DBE’s plan and  
413 issue it a building permit, or in the event such approvals are reversed in whole or in part by a court,  
414 the releases provided for in this Agreement (and attached hereto) shall become null and void.

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**[SIGNATURE PAGE FOLLOWS]**

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December 6, 2010

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421           **IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have  
422 duly executed under seal this Agreement, as of the day first above written.

423

DEWEY BEACH ENTERPRISES, INC.

424

425

By: \_\_\_\_\_ (Seal)

426

427 WITNESS/ATTEST \_\_\_\_\_

428

429

RUDDERTOWNE REDEVELOPMENT, INC.

430

431

By: \_\_\_\_\_ (Seal)

432

433 WITNESS/ATTEST \_\_\_\_\_

434

435

TOWN OF DEWEY BEACH, DELAWARE

436

437

By: \_\_\_\_\_ (Seal)

438

Diana Smith, Town Manager

439

440

441 WITNESS/ATTEST

442

443 Dated: \_\_\_\_\_

444

445

**“Confidential and subject to Delaware Rule of Evidence 408”**

December 6, 2010

446 **APPROVED BY A MAJORITY VOTE OF THE DEWEY BEACH TOWN COUNCIL ON**  
447 **THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2011.**

448

449

TOWN OF DEWEY BEACH, DELAWARE

450

451

By: \_\_\_\_\_ (Seal)

452

Mayor Diane Hanson

453

454

455 WITNESS/ATTEST

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December 6, 2010

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**EXHIBIT A**

**MUTUAL RELEASE  
BETWEEN  
MAYOR DIANE HANSON AND DEWEY BEACH ENTERPRISES, INC. AND  
RUDDERTOWNE REDEVELOPMENT, INC.**

**WHEREAS**, Dewey Beach Enterprises, Inc., (“DBE”), and Ruddertowne Redevelopment, Inc. (“RR”), and the Town of Dewey Beach (“Dewey Beach” or “Town”), including Mayor Diane Hanson, former Commissioners Richard Hanewinckel and Dell Tush, David King, a member of Planning & Zoning, and the Town Board of Adjustment (collectively, “The Town”) are involved in civil matters filed by DBE against the Town over the use of DBE’s Property, including the following matters, (collectively, the “Litigation”):

- (1) Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v. Town of Dewey Beach, Dell Tush, David King, Diane Hanson and Richard Hanewinckel, C.A. No. 09-507 (GMS).
- (2) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinckel, Diane Hanson and Marty Seitz, C.A. No. 4426-VCN.
- (3) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5833-VCN.
- (4) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 4991-VCN.
- (5) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5711.

**WHEREAS**, DBE and the Dewey Beach Town Manager executed a Mutual Agreement & Release (the “Agreement”) on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 that was expressly contingent upon the final adoption of the Agreement by a majority vote of the Town Council for the Town of Dewey Beach (“Dewey Beach” or “Town”); and

**WHEREAS**, the Town Council for the Town of Dewey Beach adopted the Agreement by a majority vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

December 6, 2010

497           **WHEREAS**, the Agreement provides that upon its approval by the Town Council of  
498 Dewey Beach, all Defendants named in their personal capacities in the Litigation shall have fifteen  
499 (15) days to execute a release and that DBE shall execute a mutual release for each Defendant  
500 named in their personal capacities in the Litigation that executes the release.

501           **NOW THEREFORE**, in the interest of resolving and settling all the Litigation between  
502 the parties, **DBE, RR, and Mayor Diane Hanson** agree as follows:

503

504    **RELEASE BY DBE AND RR**

505           (a) Upon approval of DBE’s plan and building permit and the expiration of  
506 applicable appeal periods , DBE and RR do hereby release, remise, acquit and forever discharge  
507 **Mayor Diane Hanson** and her principals, agents, partners, employees, servants, heirs, executors,  
508 administrators, attorneys, successors, affiliates, predecessors-in-interests and all other persons,  
509 firms, corporations, associations or partnerships with which she may be associated, of and from all,  
510 and all manner of, past or present claims, demands, actions and causes of action, debts, dues, sums  
511 of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
512 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
513 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
514 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
515 both to person and property, which have resulted from its relationship with **Mayor Diane Hanson**  
516 and/or any of her predecessors interests which are, or could have been, the subject of any litigation  
517 against **Mayor Diane Hanson** which DBE or RR has ever had, now has, or which their executors,  
518 administrators, successors or assigns, or any of them, hereafter can, shall or may have, for or by  
519 reason of any matter, cause or thing whatsoever, from the beginning to the end of the world.  
520 However, this release does not apply to any future wrongs that may be committed against DBE or  
521 RR by **Mayor Diane Hanson**, her principals, agents, partners, employees, servants, heirs,  
522 executors, administrators, attorneys, successors, affiliates, predecessors interests and all other  
523 persons, firms, corporations, associations or partnerships with which they may be associated.

524           (b) It is expressly understood and agreed that this Release is being executed for the  
525 express purpose of precluding forever any further or additional claims, demands, damages, actions,  
526 causes of action or suit of any kind or nature by DBE or RR against the **Mayor Diane Hanson**  
527 arising out of any action previously taken by **Mayor Diane Hanson** or any of her predecessors-in-  
528 interests in connection with any of DBE’s or RR’s dealings with **Mayor Diane Hanson**.

December 6, 2010

529 (c) DBE and RR hereby further declares and represents that no promises,  
530 inducements, representations or agreements not expressly stated herein have been made to it except  
531 as set forth herein, and that this Release contains the entire agreement between it and **Mayor Diane**  
532 **Hanson** in regard to the Release, and that the terms of this Release are contractual, and not merely a  
533 recital.

534

535 (12) RELEASE BY MAYOR DIANE HANSON

536 (a) Upon approval of DBE’s plan and building permit and the expiration of  
537 applicable appeal periods , **Mayor Diane Hanson** does hereby release, remise, acquit and forever  
538 discharge DBE and RR, and their principals, agents, partners, employees, servants, heirs, executors,  
539 administrators, attorneys, successors, affiliates, predecessors-in-interests and all other persons,  
540 firms, corporations, associations or partnerships with which it may be associated, of and from all,  
541 and all manner of, past or present claims, demands, actions and causes of action, debts, dues, sums  
542 of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
543 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
544 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
545 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
546 both to person and property, which have resulted from her relationship with DBE or RR and/or any  
547 of their predecessors interests which are, or could have been, the subject of any litigation against  
548 DBE which **Mayor Diane Hanson** ever had, now has, or which her executors, administrators,  
549 successors or assigns, or any of them, hereafter can, shall or may have, for or by reason of any  
550 matter, cause or thing whatsoever, from the beginning to the end of the world. However, this  
551 release does not apply to any future wrongs that may be committed against **Mayor Diane Hanson**  
552 by DBE or RR, their principals, agents, partners, employees, servants, heirs, executors,  
553 administrators, attorneys, successors, affiliates, predecessors interests and all other persons, firms,  
554 corporations, associations or partnerships with which it may be associated.

555 (b). It is expressly understood and agreed that this Release is being executed for  
556 the express purpose of precluding forever any further or additional claims, demands, damages,  
557 actions, causes of action or suit of any kind or nature by **Mayor Diane Hanson** against DBE or RR  
558 arising out of any action previously taken by DBE or RR or any of their predecessors-in-interests in  
559 connection with any of **Mayor Diane Hanson’s** dealings with DBE or RR.

560 (c) **Mayor Diane Hanson** hereby further declares and represents that no  
561 promises, inducements, representations or agreements not expressly stated herein have been made to  
562 her except as set forth herein, and that this Release contains the entire agreement between her and  
563 DBE and RR in regard to the Release, and that the terms of this Release are contractual, and not  
564 merely a recital.

December 6, 2010

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**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have duly executed under seal this Release on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

DEWEY BEACH ENTERPRISES, INC.

By: \_\_\_\_\_ (Seal)

WITNESS/ATTEST \_\_\_\_\_

RUDDERTOWNE REDEVELOPMENT, INC.

By: \_\_\_\_\_ (Seal)

WITNESS/ATTEST \_\_\_\_\_

MAYOR DIANE HANSON

\_\_\_\_\_ (Seal)

WITNESS/ATTEST

December 6, 2010

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**MUTUAL RELEASE  
BETWEEN  
FORMER MAYOR DELL TUSH AND DEWEY BEACH ENTERPRISES, INC. AND  
RUDDERTOWNE REDEVELOPMENT, INC.**

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**WHEREAS**, Dewey Beach Enterprises, Inc., (“DBE”), and Ruddertowne Redevelopment, Inc. (“RR”), and the Town of Dewey Beach (“Dewey Beach” or “Town”), including Mayor Diane Hanson, former Commissioners Richard Hanewinkel and Dell Tush, David King, a member of Planning & Zoning, and the Town Board of Adjustment (collectively, “The Town”) are involved in civil matters filed by DBE against the Town over the use of DBE’s Property, including the following matters, (collectively, the “Litigation”):

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(1) Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v. Town of Dewey Beach, Dell Tush, David King, Diane Hanson and Richard Hanewinkel, C.A. No. 09-507 (GMS).

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(2) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinkel, Diane Hanson and Marty Seitz, C.A. No. 4426-VCN.

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(3) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5833-VCN.

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(4) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 4991-VCN.

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(5) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5711.

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**WHEREAS**, DBE and the Dewey Beach Town Manager executed a Mutual Agreement & Release (the “Agreement”) on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 that was expressly contingent upon the final adoption of the Agreement by a majority vote of the Town Council for the Town of Dewey Beach (“Dewey Beach” or “Town”); and

628

629

**WHEREAS**, the Town Council for the Town of Dewey Beach adopted the Agreement by a majority vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

630

631

**WHEREAS**, the Agreement provides that upon its approval by the Town Council of Dewey Beach, all Defendants named in their personal capacities in the Litigation shall have fifteen

December 6, 2010

632 (15) days to execute a release and that DBE shall execute a mutual release for each Defendant  
633 named in their personal capacities in the Litigation that executes the release.

634 **NOW THEREFORE**, in the interest of resolving and settling all the Litigation between  
635 the parties, **DBE, RR, and Former Mayor Dell Tush** agree as follows:

636

637 **RELEASE BY DBE AND RR**

638 (a) Upon approval of DBE’s plan and building permit and the expiration of  
639 applicable appeal periods , DBE and RR do hereby release, remise, acquit and forever discharge  
640 **Former Mayor Dell Tush** and her principals, agents, partners, employees, servants, heirs,  
641 executors, administrators, attorneys, successors, affiliates, predecessors-in-interests and all other  
642 persons, firms, corporations, associations or partnerships with which she may be associated, of and  
643 from all, and all manner of, past or present claims, demands, actions and causes of action, debts,  
644 dues, sums of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies,  
645 agreements, promises, commissions, damages, judgments, executions, third-party actions and  
646 causes of action, and any and all suits at law or in equity, including claims for contribution and/or  
647 indemnity, of whatever nature, and particularly on account of all injuries, known and unknown, past  
648 and future, both to person and property, which have resulted from its relationship with **Former**  
649 **Mayor Dell Tush** and/or any of her predecessors interests which are, or could have been, the  
650 subject of any litigation against **Former Mayor Dell Tush** which DBE or RR has ever had, now  
651 has, or which their executors, administrators, successors or assigns, or any of them, hereafter can,  
652 shall or may have, for or by reason of any matter, cause or thing whatsoever, from the beginning to  
653 the end of the world. However, this release does not apply to any future wrongs that may be  
654 committed against DBE or RR by **Former Mayor Dell Tush**, her principals, agents, partners,  
655 employees, servants, heirs, executors, administrators, attorneys, successors, affiliates, predecessors  
656 interests and all other persons, firms, corporations, associations or partnerships with which they may  
657 be associated.

658 (b) It is expressly understood and agreed that this Release is being executed for the  
659 express purpose of precluding forever any further or additional claims, demands, damages, actions,  
660 causes of action or suit of any kind or nature by DBE or RR against **Former Mayor Dell Tush**  
661 arising out of any action previously taken by **Former Mayor Dell Tush** or any of her  
662 predecessors-in-interests in connection with any of DBE’s or RR’s dealings with **Former Mayor**  
663 **Dell Tush**.

664 (c) DBE and RR hereby further declare and represent that no promises,  
665 inducements, representations or agreements not expressly stated herein have been made to them  
666 except as set forth herein, and that this Release contains the entire agreement between them and  
667 **Former Mayor Dell Tush** in regard to the Release, and that the terms of this Release are  
668 contractual, and not merely a recital.

December 6, 2010

669

670 (12) **RELEASE BY FORMER MAYOR DELL TUSH**

671 (a) Upon approval of DBE’s plan and building permit and the expiration of  
672 applicable appeal periods, **Former Mayor Dell Tush** does hereby release, remise, acquit and  
673 forever discharge DBE and RR, and their principals, agents, partners, employees, servants, heirs,  
674 executors, administrators, attorneys, successors, affiliates, predecessors-in-interests and all other  
675 persons, firms, corporations, associations or partnerships with which it may be associated, of and  
676 from all, and all manner of, past or present claims, demands, actions and causes of action, debts,  
677 dues, sums of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies,  
678 agreements, promises, commissions, damages, judgments, executions, third-party actions and  
679 causes of action, and any and all suits at law or in equity, including claims for contribution and/or  
680 indemnity, of whatever nature, and particularly on account of all injuries, known and unknown, past  
681 and future, both to person and property, which have resulted from her relationship with DBE or RR  
682 and/or any of their predecessors interests which are, or could have been, the subject of any litigation  
683 against DBE or RR which **Former Mayor Dell Tush** ever had, now has, or which her executors,  
684 administrators, successors or assigns, or any of them, hereafter can, shall or may have, for or by  
685 reason of any matter, cause or thing whatsoever, from the beginning to the end of the world.  
686 However, this release does not apply to any future wrongs that may be committed against **Former**  
687 **Mayor Dell Tush** by DBE or RR, their principals, agents, partners, employees, servants, heirs,  
688 executors, administrators, attorneys, successors, affiliates, predecessors interests and all other  
689 persons, firms, corporations, associations or partnerships with which they may be associated.

690 (b). It is expressly understood and agreed that this Release is being executed for  
691 the express purpose of precluding forever any further or additional claims, demands, damages,  
692 actions, causes of action or suit of any kind or nature by **Former Mayor Dell Tush** against DBE or  
693 RR arising out of any action previously taken by DBE or RR or any of their predecessors-in-  
694 interests in connection with any of **Former Mayor Dell Tush’s** dealings with DBE or RR.

695 (c) **Former Mayor Dell Tush** hereby further declares and represents that no  
696 promises, inducements, representations or agreements not expressly stated herein have been made to  
697 her except as set forth herein, and that this Release contains the entire agreement between her and  
698 DBE and RR in regard to the Release, and that the terms of this Release are contractual, and not  
699 merely a recital.

700

701 **IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have  
702 duly executed under seal this Release on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

703

December 6, 2010

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DEWEY BEACH ENTERPRISES, INC.

706

707

By: \_\_\_\_\_ (Seal)

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WITNESS/ATTEST \_\_\_\_\_

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RUDDERTOWNE REDEVELOPMENT, INC.

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By: \_\_\_\_\_ (Seal)

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WITNESS/ATTEST \_\_\_\_\_

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FORMER MAYOR DELL TUSH

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\_\_\_\_\_ (Seal)

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WITNESS/ATTEST

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December 6, 2010

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**MUTUAL RELEASE**

**BETWEEN**

**FORMER COMMISSIONER RICHARD HANEWINCKEL AND DEWEY BEACH ENTERPRISES, INC. AND RUDDERTOWNE REDEVELOPMENT, INC.**

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**WHEREAS**, Dewey Beach Enterprises, Inc., (“DBE”), and Ruddertowne Redevelopment, Inc. (“RR”), and the Town of Dewey Beach (“Dewey Beach” or “Town”), including Mayor Diane Hanson, former Commissioners Richard Hanewinckel and Dell Tush, David King, a member of Planning & Zoning, and the Town Board of Adjustment (collectively, “The Town”) are involved in civil matters filed by DBE against the Town over the use of DBE’s Property, including the following matters, (collectively, the “Litigation”):

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(1) Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v. Town of Dewey Beach, Dell Tush, David King, Diane Hanson and Richard Hanewinckel, C.A. No. 09-507 (GMS).

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(2) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinckel, Diane Hanson and Marty Seitz, C.A. No. 4426-VCN.

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(3) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5833-VCN.

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(4) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 4991-VCN.

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(5) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5711.

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**WHEREAS**, DBE and the Dewey Beach Town Manager executed a Mutual Agreement & Release (the “Agreement”) on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 that was expressly contingent upon the final adoption of the Agreement by a majority vote of the Town Council for the Town of Dewey Beach (“Dewey Beach” or “Town”); and

763

764

**WHEREAS**, the Town Council for the Town of Dewey Beach adopted the Agreement by a majority vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

765

766

**WHEREAS**, the Agreement provides that upon its approval by the Town Council of Dewey Beach, all Defendants named in their personal capacities in the Litigation shall have fifteen

December 6, 2010

767 (15) days to execute a release and that DBE shall execute a mutual release for each Defendant  
768 named in their personal capacities in the Litigation that executes the release.

769 **NOW THEREFORE**, in the interest of resolving and settling all the Litigation between  
770 the parties, **DBE, RR, and Former Commissioner Richard Hanewinckel** agree as follows:

771

772 **RELEASE BY DBE AND RR**

773 (a) Upon approval of DBE’s plan and building permit and the expiration of  
774 applicable appeal periods , DBE and RR do hereby release, remise, acquit and forever discharge  
775 **Former Commissioner Richard Hanewinckel** and his principals, agents, partners, employees,  
776 servants, heirs, executors, administrators, attorneys, successors, affiliates, predecessors-in-interests  
777 and all other persons, firms, corporations, associations or partnerships with which she may be  
778 associated, of and from all, and all manner of, past or present claims, demands, actions and causes  
779 of action, debts, dues, sums of money, accounts, reckonings, bonds, covenants, warrants, contracts,  
780 controversies, agreements, promises, commissions, damages, judgments, executions, third-party  
781 actions and causes of action, and any and all suits at law or in equity, including claims for  
782 contribution and/or indemnity, of whatever nature, and particularly on account of all injuries, known  
783 and unknown, past and future, both to person and property, which have resulted from their  
784 relationship with **Former Commissioner Richard Hanewinckel** and/or any of his predecessors  
785 interests which are, or could have been, the subject of any litigation against **Former**  
786 **Commissioner Richard Hanewinckel** which DBE or RR has ever had, now has, or which their  
787 executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have,  
788 for or by reason of any matter, cause or thing whatsoever, from the beginning to the end of the  
789 world. However, this release does not apply to any future wrongs that may be committed against  
790 DBE or RR by **Former Commissioner Richard Hanewinckel**, his principals, agents, partners,  
791 employees, servants, heirs, executors, administrators, attorneys, successors, affiliates, predecessors  
792 interests and all other persons, firms, corporations, associations or partnerships with which they may  
793 be associated.

794 (b) It is expressly understood and agreed that this Release is being executed for the  
795 express purpose of precluding forever any further or additional claims, demands, damages, actions,  
796 causes of action or suit of any kind or nature by DBE or RR against **Former Commissioner**  
797 **Richard Hanewinckel** arising out of any action previously taken by **Former Commissioner**  
798 **Richard Hanewinckel** or any of his predecessors-in-interests in connection with any of DBE’s or  
799 RR’s dealings with **Former Commissioner Richard Hanewinckel**.

December 6, 2010

800 (c) DBE and RR hereby further declare and represent that no promises,  
801 inducements, representations or agreements not expressly stated herein have been made to it except  
802 as set forth herein, and that this Release contains the entire agreement between them and **Former**  
803 **Commissioner Richard Hanewinckel** in regard to the Release, and that the terms of this Release  
804 are contractual, and not merely a recital.

805

806 (12) RELEASE BY FORMER COMMISSIONER RICHARD HANEWINCKEL

807 (a) Upon approval of DBE’s plan and building permit and the expiration of  
808 applicable appeal periods , **Former Commissioner Richard Hanewinckel** does hereby release,  
809 remise, acquit and forever discharge DBE and RR, and their principals, agents, partners, employees,  
810 servants, heirs, executors, administrators, attorneys, successors, affiliates, predecessors-in-interests  
811 and all other persons, firms, corporations, associations or partnerships with which they may be  
812 associated, of and from all, and all manner of, past or present claims, demands, actions and causes  
813 of action, debts, dues, sums of money, accounts, reckonings, bonds, covenants, warrants, contracts,  
814 controversies, agreements, promises, commissions, damages, judgments, executions, third-party  
815 actions and causes of action, and any and all suits at law or in equity, including claims for  
816 contribution and/or indemnity, of whatever nature, and particularly on account of all injuries, known  
817 and unknown, past and future, both to person and property, which have resulted from his  
818 relationship with DBE or RR and/or any of their predecessors interests which are, or could have  
819 been, the subject of any litigation against DBE or RR which **Former Commissioner Richard**  
820 **Hanewinckel** ever had, now has, or which his executors, administrators, successors or assigns, or  
821 any of them, hereafter can, shall or may have, for or by reason of any matter, cause or thing  
822 whatsoever, from the beginning to the end of the world. However, this release does not apply to any  
823 future wrongs that may be committed against **Former Commissioner Richard Hanewinckel** by  
824 DBE or RR, their principals, agents, partners, employees, servants, heirs, executors, administrators,  
825 attorneys, successors, affiliates, predecessors interests and all other persons, firms, corporations,  
826 associations or partnerships with which they may be associated.

827 (b). It is expressly understood and agreed that this Release is being executed for  
828 the express purpose of precluding forever any further or additional claims, demands, damages,  
829 actions, causes of action or suit of any kind or nature by **Former Commissioner Richard**  
830 **Hanewinckel** against DBE or RR arising out of any action previously taken by DBE or RR or any  
831 of their predecessors-in-interests in connection with any of **Former Commissioner Richard**  
832 **Hanewinckel’s** dealings with DBE or RR.

December 6, 2010

833                   (c)     **Former Commissioner Richard Hanewinckel** hereby further declares  
834 and represents that no promises, inducements, representations or agreements not expressly stated  
835 herein have been made to him except as set forth herein, and that this Release contains the entire  
836 agreement between him and DBE and RR in regard to the Release, and that the terms of this  
837 Release are contractual, and not merely a recital.

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839                   **IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have  
840 duly executed under seal this Release on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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DEWEY BEACH ENTERPRISES, INC.

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845

By: \_\_\_\_\_ (Seal)

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RUDDERTOWNE REDEVELOPMENT, INC.

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By: \_\_\_\_\_ (Seal)

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851 WITNESS/ATTEST \_\_\_\_\_

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854 WITNESS/ATTEST \_\_\_\_\_

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FORMER COMMISSIONER RICHARD HANEWINCKEL

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\_\_\_\_\_ (Seal)

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**“Confidential and subject to Delaware Rule of Evidence 408”**

December 6, 2010

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861 WITNESS/ATTEST

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December 6, 2010

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**MUTUAL RELEASE  
BETWEEN  
DAVID KING AND DEWEY BEACH ENTERPRISES, INC. AND RUDDERTOWNE  
REDEVELOPMENT, INC.**

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**WHEREAS**, Dewey Beach Enterprises, Inc., (“DBE”), and Ruddertowne Redevelopment, Inc. (“RR”), and the Town of Dewey Beach (“Dewey Beach” or “Town”), including Mayor Diane Hanson, former Commissioners Richard Hanewinckel and Dell Tush, David King, a member of Planning & Zoning, and the Town Board of Adjustment (collectively, “The Town”) are involved in civil matters filed by DBE against the Town over the use of DBE’s Property, including the following matters, (collectively, the “Litigation”):

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(1) Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v. Town of Dewey Beach, Dell Tush, David King, Diane Hanson and Richard Hanewinckel, C.A. No. 09-507 (GMS).

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(2) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinckel, Diane Hanson and Marty Seitz, C.A. No. 4426-VCN.

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(3) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5833-VCN.

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(4) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 4991-VCN.

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(5) Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, [JamesJames](#) Przygocki, and Marty Seitz, C.A. No. 5711.

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**WHEREAS**, DBE and the Dewey Beach Town Manager executed a Mutual Agreement & Release (the “Agreement”) on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 that was expressly contingent upon the final adoption of the Agreement by a majority vote of the Town Council for the Town of Dewey Beach (“Dewey Beach” or “Town”); and

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**WHEREAS**, the Town Council for the Town of Dewey Beach adopted the Agreement by a majority vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

December 6, 2010

904           **WHEREAS**, the Agreement provides that upon its approval by the Town Council of  
905 Dewey Beach, all Defendants named in their personal capacities in the Litigation shall have fifteen  
906 (15) days to execute a release and that DBE shall execute a mutual release for each Defendant  
907 named in their personal capacities in the Litigation that executes the release.

908           **NOW THEREFORE**, in the interest of resolving and settling all the Litigation between  
909 the parties, **DBE, RR, and David King** agree as follows:  
910

911    **RELEASE BY DBE AND RR**

912           (a) Upon approval of DBE’s plan and building permit and the expiration of  
913 applicable appeal periods , DBE and RR does hereby release, remise, acquit and forever discharge  
914 **David King** and his principals, agents, partners, employees, servants, heirs, executors,  
915 administrators, attorneys, successors, affiliates, predecessors-in-interests and all other persons,  
916 firms, corporations, associations or partnerships with which she may be associated, of and from all,  
917 and all manner of, past or present claims, demands, actions and causes of action, debts, dues, sums  
918 of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
919 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
920 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
921 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
922 both to person and property, which have resulted from their relationship with **David King** and/or  
923 any of his predecessors interests which are, or could have been, the subject of any litigation against  
924 **David King** which DBE or RR has ever had, now has, or which their executors, administrators,  
925 successors or assigns, or any of them, hereafter can, shall or may have, for or by reason of any  
926 matter, cause or thing whatsoever, from the beginning to the end of the world. However, this  
927 release does not apply to any future wrongs that may be committed against DBE or RR by **David**  
928 **King**, his principals, agents, partners, employees, servants, heirs, executors, administrators,  
929 attorneys, successors, affiliates, predecessors interests and all other persons, firms, corporations,  
930 associations or partnerships with which they may be associated.

931           (b) It is expressly understood and agreed that this Release is being executed for the  
932 express purpose of precluding forever any further or additional claims, demands, damages, actions,  
933 causes of action or suit of any kind or nature by DBE or RR against **David King** arising out of any  
934 action previously taken by **David King** or any of his predecessors-in-interests in connection with  
935 any of DBE’s or RR’s dealings with **David King**.

936           (c) DBE and RR hereby further declare and represent that no promises,  
937 inducements, representations or agreements not expressly stated herein have been made to it except  
938 as set forth herein, and that this Release contains the entire agreement between them and **David**  
939 **King** in regard to the Release, and that the terms of this Release are contractual, and not merely a  
940 recital.

December 6, 2010

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942 (12) RELEASE BY DAVID KING

943 (a) Upon approval of DBE’s plan and building permit and the expiration of  
944 applicable appeal periods , **David King** does hereby release, remise, acquit and forever discharge  
945 DBE and RR, and their principals, agents, partners, employees, servants, heirs, executors,  
946 administrators, attorneys, successors, affiliates, predecessors-in-interests and all other persons,  
947 firms, corporations, associations or partnerships with which they may be associated, of and from all,  
948 and all manner of, past or present claims, demands, actions and causes of action, debts, dues, sums  
949 of money, accounts, reckonings, bonds, covenants, warrants, contracts, controversies, agreements,  
950 promises, commissions, damages, judgments, executions, third-party actions and causes of action,  
951 and any and all suits at law or in equity, including claims for contribution and/or indemnity, of  
952 whatever nature, and particularly on account of all injuries, known and unknown, past and future,  
953 both to person and property, which have resulted from his relationship with DBE or RR and/or any  
954 of their predecessors interests which are, or could have been, the subject of any litigation against  
955 DBE or RR which **David King** ever had, now has, or which his executors, administrators,  
956 successors or assigns, or any of them, hereafter can, shall or may have, for or by reason of any  
957 matter, cause or thing whatsoever, from the beginning to the end of the world. However, this  
958 release does not apply to any future wrongs that may be committed against **David King** by DBE or  
959 RR, their principals, agents, partners, employees, servants, heirs, executors, administrators,  
960 attorneys, successors, affiliates, predecessors interests and all other persons, firms, corporations,  
961 associations or partnerships with which they may be associated.

962 (b). It is expressly understood and agreed that this Release is being executed for  
963 the express purpose of precluding forever any further or additional claims, demands, damages,  
964 actions, causes of action or suit of any kind or nature by **David King** against DBE or RR arising out  
965 of any action previously taken by DBE or RR or any of their predecessors-in-interests in connection  
966 with any of **David King’s** dealings with DBE or RR.

967 (c) **David King** hereby further declares and represents that no promises,  
968 inducements, representations or agreements not expressly stated herein have been made to him  
969 except as set forth herein, and that this Release contains the entire agreement between him and DBE  
970 and RR in regard to the Release, and that the terms of this Release are contractual, and not merely a  
971 recital.

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973 **IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have  
974 duly executed under seal this Release on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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December 6, 2010

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DEWEY BEACH ENTERPRISES, INC.

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By: \_\_\_\_\_ (Seal)

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WITNESS/ATTEST \_\_\_\_\_

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RUDDERTOWNE REDEVELOPMENT, INC.

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By: \_\_\_\_\_ (Seal)

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WITNESS/ATTEST \_\_\_\_\_

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DAVID KING

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\_\_\_\_\_ (Seal)

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WITNESS/ATTEST

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