REDEVELOPMENT AGREEMENT

BETWEEN

THE TOWNSHIP OF BERKELEY

AND

BERKELEY REDEVELOPERS, LLC

Dated: Oct 8, 2015

THIS AGREEMENT (the "**Agreement**") is made this Oct. 8, 2015, between the **Township of Berkeley,** as redevelopment entity (the "**Township**") and **BERKELEY REDEVELOPERS, LLC** (the "**Redeveloper**").

RECITALS:

WHEREAS, the Township is a political subdivision of the State of New Jersey with offices at 627 Pinewald Keswick Road, Bayville, New Jersey 08721; and

WHEREAS, the Redeveloper is a New Jersey limited liability company with offices at 1260 Stelton Road, Piscataway, New Jersey 08854 and 2465 Kuser Road, Hamilton , New Jersey 08690 ; and

WHEREAS, in 2002 and 2003, the Township conducted a visionary exercise for the eastern mainland portion of the Township comprising an area lying between the Garden State Parkway and Barnegat Bay; and

WHEREAS, the Township recognized that future development within the Township should be primarily focused in a well-planned Town Center; and

WHEREAS, the Township determined that the most suitable location for a Town Center was an area consisting of approximately 438 acres in the northern end of the Township with frontage on Route 9; and

WHEREAS, a substantial portion of such area was, and remains, in a general state of deterioration, including without limitation, a closed shopping center and large areas containing contamination; and

WHEREAS, on January 5, 2002, the Township Council adopted a Resolution directing the Berkeley Township Planning Board to conduct a preliminary investigation as to whether the entire length of Route 9 qualified as an "area in need of redevelopment," as defined in the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-let seq. (the "**Act**"); and

WHEREAS, the Township Planning Board held public hearings and adopted a resolution recommending that the Township Council designate much of the proposed Town Center area as meeting the statutory criteria to qualify as an area in need of redevelopment under the Act; and

WHEREAS, the Township Council adopted a Resolution finding the following properties to be in need of redevelopment:

Block 822, Lot 1; Block 824, Lots 1, 1.01 and 1.02; Block 825, Lot 1; Block 825.01, Lots 1 and 2; Block 825.02, Lots 3, 4, 5, 6, 8, 10 and 12; Block 826, Lots 1, 1.01, 2, 3, 4, 5, 9, 11, 13 and 14; Block 826.01, Lots 4, 5, 6, 7, and 8; Block 827, Lot 1; Block 829, Lots 12, 13, 14 and 15; Block 829.01, Lots 3 and 4; Block 830, Lots 2, 3, 4, 5, 6, 7 and 8; Block 830.01, Lots 1, 2, 3, 4 and 5; Block 837, Lots 1, 2, 3, 4, 5, 5.01, 6, 7, 8, 9, 10 11, 12, 13, 14, 15, 16, 17, 31 and 32; Block 837.01, Lots 1, 1.01, 1.02, 1.06 and 6, comprising approximately 438 acres (collectively, the "**Redevelopment Area**"); and

WHEREAS, following review and recommendations from the Planning Board, the Township adopted a Redevelopment Plan (the "**Plan**") on August 24th, 2009, by Ordinance No. 09-21-OAB; and

WHEREAS, the Township previously designated REC Centers, LLC ("**REC**"), as redeveloper, but REC failed to perform, the Township and REC failed to enter into a redevelopment agreement, and REC's designation as redeveloper terminated, as affirmed by the Township in Resolution 13-247-R, adopted on June 24, 2013;

WHEREAS, the Township recognizes that the Redevelopment Area contains areas of contamination that require extensive environmental investigation and, once the scope of the contamination is known, will require remediation before those areas can be redeveloped; and

WHEREAS, Redeveloper is negotiating with one or more owners of property within the Redevelopment Area;

WHEREAS, the Redeveloper is comprised of entities and principals that are well established redevelopers of residential and mixed use retail projects similar to that required under the Plan and the Township has determined that that the Redeveloper has the qualifications and is capable of redeveloping the Redevelopment Area; and

WHEREAS, the Township designated the Redeveloper as the sole redeveloper of the Redevelopment Area; and

WHEREAS, the Township and Redeveloper enter into this Agreement to allow for the orderly development of the Redevelopment Area and to facilitate the improvements and environmental remediation pursuant to the Plan.

NOW THEREFORE, in consideration of the mutual promises as set forth herein, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and intending to be legally bound hereby, the Parties recognize, acknowledge, warrant, agree, represent, covenant and commit to the other as follows:

Article 1 -Recitals/Definitions

1.1 Recitals. The Recitals set forth above are incorporated herein and made a part of this Agreement as if fully set forth at length.

1.2 Defined Terms. Unless the context otherwise specifies or requires, the following terms shall have the meanings set forth below, such definitions to apply equally to the singular and plural forms of such terms and to the use of the upper and lower case initial letter of each word contained in such terms.

Access and Demolition Agreement: The Agreement between Redeveloper and Township for the entry upon the Shopping Center Parcel, as defined in Section 3.3, *infra,* and for the demolition of the structures upon the Shopping Center Parcel. A copy of the Access and Demolition Agreement is attached hereto as Exhibit A.

Acquisition Parcels: Any parcels that become the subject of purchase agreements by the Redeveloper as the contract purchaser.

Act and/or Agency Law and/or Redevelopment Law: N.J.S.A. 40A: 12A-1 et seq.

Agreement: This Agreement.

Approvals: Any and all final, non-appealable federal, state, county or local approvals, authorizations, permits, licenses, and certificates needed from any governmental or quasigovernmental authorities having jurisdiction, subject only to such terms and conditions that do not constitute unacceptable conditions as determined solely by Redeveloper, and all easements, rights-of-way and agreements from third parties, whether public or private, that may be necessary to implement any or all of the Project in accordance with the Plan, this Agreement and any amended agreements.

Asphalt Parcel: As defined in Section 3.3.

Beachwood Site: Asdfined in Section 3.3.

CAFRA: Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.

Certificate of Completion: As defined in Article 13.

Certificate of Occupancy: Certificate issued by the Township or agent thereof after inspection showing ability to occupy property and, if required in the case of retail, to include a mercantile license.

Concept Plan: The Redeveloper's proposed plan for redevelopment of the Redevelopment Area, which shall be created following the environmental investigation and attached hereto by amendment and which may be amended and modified in connection with discussions with the Township, the Approvals and the build out of the Project, and as otherwise provided in this Agreement.

Construction Code Official: A Class I building and a Class I building subcode individual with appropriate qualifications hired or contracted for by the Township, with the input of Redeveloper. The Construction Code Official will review and expedite site plan and building plan reviews, permits and inspections.

Design Standards: The design standards set forth in the Plan, as amended from time to time.

Environmental Laws: Any and all federal, state, county, regional and local laws, statutes, ordinances, regulations, rules, guidance, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, threatened or endangered species habitat, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified or adopted.

ERG: Economic Redevelopment and Growth Grant Program, pursuant to the New Jersey Economic Stimulus Act of 2009, P.L.2009, c.90.

Event of Default: As defined in Section 16.3.

Financial Agreement (Tax Exemption): An agreement entered into pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., for an annual payment in lieu of taxes to the Township.

Financial Institution: Any lender providing a mortgage loan.

Force Majeure: As defined in Article 17.

Hazardous Substances: Any substance, material or waste, whether liquid, gaseous or solid, that is identified as a "Hazardous Substance" under any Environmental Law.

Holder: Any lender holding a mortgage or lien to secure financing for acquisition and/or development of all or any phase or portion of the Project.

Infrastructure Improvements: On and off Site public use and/or beneficial improvements to be constructed under the Plan, including but not limited to utilities, roadways, traffic signals and walkway, park, signs, lighting and landscape improvements.

Improvements: All new or rehabilitated buildings, structures and appurtenances, including, but not limited to, all improvements constructed or installed on or off-Site in accordance with approved Plans and Specifications. Improvements also comprise all facilities, amenities, on and off street parking, landscaping and fencing and enhancements made in the Project and the streets within the Redevelopment Area and off-Site, including all Infrastructure Improvements, utilities, catch basins, curbs, site lighting, trees, roadways, traffic striping, signage, walkways, sidewalks and open space treatments as shown on Site Plans.

NJDEP: New Jersey Department of Environmental Protection.

NJDOT: New Jersey Department of Transportation.

Parties: The Township and the Redeveloper, their successors or assignees.

Permitted Transfers: The following transfers shall not require prior approval by the Township and are deemed permitted:

(i) a mortgage or mortgages on any portion of the Redevelopment Area to finance the costs associated with, or incurred in connection with, the acquisition of any portion of the Redevelopment Area and the development and construction of the Improvements. To the extent that the Redeveloper encumbers any property owned by Redeveloper and the planned redevelopment of such property does not occur, such mortgage(s) shall be the sole responsibility of Redeveloper;

(ii) utility and other development easements, together with any restrictions or encumbrances required by any Approval;

(iii) an assignment and/or transfer of all or part of the Redeveloper's interest in this Agreement and/or the Redevelopment Area, or any portion thereof, to an affiliate in which the Redeveloper or Redeveloper's principals have a controlling ownership interest as of the date this Agreement is executed;

(iv) conveyance of the Redevelopment Area, or a portion thereof or an interest therein, to an urban renewal entity controlled by or under common control (determined as of the date this Agreement is executed) with the Redeveloper or Redeveloper's principals if such a conveyance is required by the Tax Exemption Law or for financing purposes;

(v) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(vi) any contract, agreement or assignment with respect to any of the transactions set forth in subsections (i)-(v) above;

(vii) any lease, option agreement or contract of sale for all or any portion of the Redevelopment Area and/or Improvements with occupancy or closing to occur following issuance of a Certificate of Occupancy or Certificate of Completion;

(viii) the filing of a master deed to submit some or all of the Redevelopment Area to a condominium regime; or

(ix) the transfer of any direct or indirect interest of any partner, shareholder or member of Redeveloper by merger, acquisition or operation of law.

Redeveloper shall provide written notice to the Township of any Permitted Transfer under section (iii), (iv), (vi) or (viii), above, within thirty (30) days following the transfer.

Phasing Plan: Priority areas of development of the Redevelopment Area, as determined and amended by Redeveloper from time to time and subject to Township approval, not to be unreasonably delayed, conditioned or withheld.

Phase: Any phase, part or portion of the development contemplated for the Site.

PILOT: Payment in lieu of taxes, pursuant to the Long-Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq.

Plan: The Redevelopment Plan approved and adopted by the Township on August 24, 2009, under Ordinance No. Ordinance No. 09-21-OAB and incorporated herein by reference, as such Plan may be amended from time to time.

Planning Board: Berkeley Township Planning Board.

Project: Any phase, part or portion of the development contemplated for the Site under the Plan and this Agreement.

Project Engineer: The Township engineer or a third party engineer engaged by the Township, with the Redeveloper's consent, responsible for reviewing all site plans prepared by the Redeveloper's professionals, preparing bond estimates, and performing inspections of public and off-site improvements.

RAB: Redevelopment Area Bond Act, pursuant to N.J.S.A. 40A: 12A-64 et seq.)

Redeveloper: Berkeley Redevelopers, LLC, its successors and/or assigns, as approved by the Township pursuant to this Agreement, including any subsidiary or affiliate directly or indirectly controlled by the Redeveloper.

Redevelopment Entity: Township Council of the Township of Berkeley, acting as the redevelopment agency pursuant to N.J.S.A. 40A: 12A-1 et seq., as amended from time to time.

Responsible Party: The party that is determined to have caused or permitted contamination in a given area of a Site and that requires remediation pursuant to NJDEP requirements.

Schedule: The Project schedule for the Shopping Center Parcel attached as Exhibit B to this Agreement, as amended from time to time and which may be amended and modified in connection with discussions with the Township, the Approvals and the build out of the Project, environmental testing, and as otherwise provided in this Agreement.

Shopping Center Parcel: As defined in Section 3.3.

Site: The land comprising any portion of the Redevelopment Area upon which a Phase is to be constructed.

Township: Individually and collectively, the Mayor, Council, Business Administrator, Clerk, Township attorney and, any and all other persons, entities or third parties employed, engaged or consulted by the Township, whether or not compensated in any capacity or manner with respect to any portion, phase or component of the Plan or the Site.

Article 2 - Purpose

2.1 Purpose. The purpose of this Agreement is as follows:

a. To delineate the Township responsibilities and the responsibilities of the Redeveloper as the exclusive redeveloper of the Redevelopment Area created under the Plan; and

b. To set forth the respective rights, duties, obligations, covenants, conditions and agreements by and between the Township and Redeveloper for the redevelopment of the Redevelopment Area as outlined in the Plan.

Article 3 -Duties of the Parties

The Parties recognize that due to the unknown scope of pollution and remediation related to this project, the parties will act in good faith and attempt to develop solutions to problems or unanticipated situations that arise during the pendency of this agreement. The Parties recognize that the resolution of some or all problems or unanticipated situations may require amending or otherwise altering the terms of this and other agreements relating to redevelopment.

3.1 Duties of the Redeveloper. Redeveloper shall perform the following duties in furtherance of carrying out the Project:

a. Construct only the uses specified in the Plan in a manner consistent with the Design Standards and requirements of the Plan.

b. Retain all professionals and pay the expenses of all professionals, including the third party professionals engaged by the Township, as determined reasonable and necessary by the Redeveloper and the Township to obtain all Approvals to develop the Redevelopment Area, or any part thereof, which Approvals are deemed to be conditions precedent to any and all other duties or obligations of the Redeveloper. Redeveloper shall determine when and in what order to file each specific application for approval, subject to the Schedule and any extensions. Redeveloper shall have no obligation to accept any unsatisfactory requirement or conditions, not otherwise required by law, to obtain any approval for any portion or phase of the Project, including, without limitation, so called "contribution," "impact" or "linkage" fees.

c. Acquire title to all or part of the Redevelopment Area as necessary for the redevelopment. This provision shall not affect any plans on the part of the Township to condemn, or otherwise acquire, portions of the Site.

d. Subsequent to the purchase of any Site or, if by separate agreement prior to the Redeveloper's acquisition of any Site, the Redeveloper will complete any required environmental remediation of such Site, subject to reimbursement from the Township with the proceeds of a Financial Agreement for previously developed Sites and subject to (i) contribution by any Responsible Party or (ii) deduction from any consideration due to any Responsible Party, as set forth in the remedial investigation work plan under direction of a Licensed Site Remediation Professional ("LSRP") in accordance with NJDEP requirements; and (iii) the availability of Hazardous Discharge Site Remediation Fund ("HDSRF") grants . If the Township elects to remediate any property owned by the Township, the LSRP shall be appointed by the Township, at the Township's expense, with Redeveloper's input and approval. Otherwise, the Redeveloper shall retain the LSRP. It is the intention of the parties that the Township and Redeveloper will enter into a Financial Agreement in respect of the Shopping Center Parcel and to use proceeds of a RAB bond issue or an amount equal to a portion of PILOT proceeds, in a percentage agreed to in good faith between Redeveloper and Township, which shall not exceed 90% from the Shopping Center Parcel to fund the remediation of the Asphalt Parcel. Alternatively, the Redeveloper may, upon consultation with Township, elect to fund the remediation of the Asphalt Parcel directly and use the proceeds of a RAB bond issue or a portion of PILOT proceeds to pay for the cost of offsite improvements necessary for the redevelopment. Inasmuch as any Financial Agreement will be subject to future application and approval under applicable law, except for the remediation associated with the demolition of the vertical improvements on the Shopping Center Parcel, and redevelopment of the Shopping Center Parcel, the Redeveloper shall not commence any environmental remediation of any other portion of the Redevelopment Area for which reimbursement from the Township will be sought, unless and until a Financial Agreement acceptable to the Redeveloper has been approved and executed, and the Township's responsibility for such reimbursement shall be limited to the aforesaid sources of funds or any other funds available to the Township such as HDSRF, etc. All unreimbursed demolition and remediation expenses incurred by the Redeveloper for the redevelopment of the Shopping Center Parcel shall be credited towards the consideration, if any, owed as result of the Township condemnation of the Shopping Center Parcel.

e. Within ninety (90) days after the occurrence of all of the following (i) acquiring title to all properties necessary for the development of such Phase, (ii) receipt of all Approvals necessary for the development of such Phase, including issuance of building permits for the improvements in such Phase, (iii) receipt of financing for the development of such Phase upon terms acceptable to Redeveloper, (iv) the availability of utilities to support such Phase, (v) for any commercial components, receipt of signed leases acceptable to Redeveloper for at least 50% of the leasable square footage, and (vi) Remediation, if required, of any environmental contamination in such Phase, Redeveloper shall undertake construction of all

Improvements as approved for the specific Phase or sub-Phase (excluding improvements contemplated for pad sites).

f. Market the Project to potential users, homeowners, tenants and/or joint venture partners.

g. Seek to obtain financing it deems reasonable and necessary for the purchase of each applicable Phase of the Redevelopment Area and for the construction of the Improvements contemplated under the Project.

h. Assist with and participate in a coordinated defense in the event of litigation and, if necessary, make such corrections to document or agreements and pay Redeveloper's litigation costs, with the Township paying its own costs if named in any litigation that is not a result of the Redeveloper's negligent action, error or omission.

i. Diligently and in good faith perform any and all other acts, duties, obligations, agreements, covenants, promises and commitments as stated in this Agreement.

j. Except as otherwise provided in this Agreement, will not sell or transfer all or any part of the development rights under this Agreement without the consent of the Township.

k. The Redeveloper shall, at Redeveloper's expense, commence seeking all approvals to remediate and develop the Shopping Center Parcel.

l. Redeveloper shall, at all times, maintain insurance as is customary for a project of this type, and shall name the Township as an additional insured.

3.2 <u>Duties of the Township</u>. In accordance with its duties hereunder in this Agreement, the Township shall perform the following duties to further the redevelopment of the Redevelopment Area:

a. The Township will not negotiate or entertain another redeveloper for any portion of the Redevelopment Area, without the prior written consent of the Redeveloper. The Township will diligently pursue DEP approval of the subdivision and the overall remediation structure (i.e., using , HDSRF, RAB or PILOT funds), which approval is a condition to the Redeveloper's obligation to perform hereunder.

b. Provided Redeveloper complies in all material respects with the Design Standards in the Redevelopment Plan, Township shall approve site layout plan(s) for formal application to the Planning Board within thirty (30) days of submission by Redeveloper. The cost of such review shall be paid from the escrow account established by the Redeveloper with the Township pursuant to this Agreement.

c. Township shall exercise powers of eminent domain, upon the written request from Redeveloper, if Redeveloper has, to the Township's reasonable satisfaction, conducted good faith negotiations with any property owner to acquire the property to be acquired, but has been unable to reach agreement within six (6) months after commencement of such negotiations, unless extended by Redeveloper in its sole discretion and with notice provided to Township of such extension. Negotiations with any property owners shall not exceed one (1) year without Township approval. Negotiations shall occur contemporaneously with Redeveloper's duties under this Agreement unless negotiations are delaying the redevelopment as a whole. In such case, any extension of time to negotiate shall toll any requirement as set forth in this Agreement. If Township exercises its eminent domain power under this section pursuant to Redeveloper's request, Redeveloper shall purchase the parcel from the Township for the amount paid by the Township in the condemnation proceeding (subject to the terms of Section 19.1) instituted by Township. In the event Redeveloper does not proceed with Redevelopment, or the Redevelopment does not otherwise proceed through no fault of the Township, Redeveloper shall retain title to any parcel acquired pursuant to this section provided, however, that the Township may, at its option, repurchase any and all undeveloped parcels that were acquired by eminent domain, for fair market value, determined by an appraisal value that the parties will negotiate in good faith to agree upon. If the parties cannot agree upon an appraised value, each party, at its own cost, shall engage an appraiser to determine an appraised value, and the two appraisers shall agree upon an appraised value, which shall be binding upon the parties. Township and Redeveloper agree that improvement upon one parcel shall not be used in valuing an otherwise un-redeveloped parcel.

d. Jointly with Redeveloper and at Redeveloper's expense, negotiate any necessary CAFRA approval or amendment with the NJDEP for the Plan uses and densities and to cooperate with other applications to NJDEP for other approvals (e.g., the issuance of a General Permit) if applicable, and to cooperate fully with the Redeveloper to obtain any NJDOT, water, sewer or Ocean County permits to develop the Redevelopment Area and make improvements to existing roadways, and any other Federal, State, County or municipal approvals.

e. Vacate and deed to Redeveloper or, at Redeveloper's direction, to any joint venture redeveloper approved by the Township, public streets, at no cost, pursuant to the Plan.

f. Upon proper application and compliance with all pre-requisites, promptly and expeditiously issue permits and cooperate with outside agencies that require the Township's consent for the construction and rehabilitation of certain Infrastructure Improvements to be undertaken by the Redeveloper within and surrounding the Redevelopment Area.

g. Promptly and expeditiously cooperate in the application for Federal, State and County grants, loans and consider in good faith any requests for tax abatements or exemptions available to Redeveloper and any other joint venture redeveloper approved by the Township and for the redevelopment of the Redevelopment Area and its Improvements, particularly Infrastructure Improvements and public benefit projects.

h. Amend the Plan to incorporate and be consistent with the Concept Plan, as same may be amended in accordance with Paragraph 4.1 below.

i. Use best efforts and good faith to diligently perform any and all other acts, duties, obligations, agreements, covenants, promises and commitments as stated in this Agreement.

j. It is the intention of the parties that the costs of environmental remediation of the Site will be funded through either the proceeds of a RAB bond issue or an amount equal to a portion of PILOT proceeds, in a percentage agreed to in good faith between Redeveloper and Township, which shall not exceed 90% from the commercial development of the Shopping Center Parcel. Upon proper application by the Redeveloper, the Township shall consider such application. Provided that the Redeveloper has satisfied the requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Township shall have the discretion, subject to any applicable restrictions set forth in statute, ordinance, rule or regulation, to enter into long term tax abatement and payment in lieu of taxes program ("PILOT") for the Shopping Center Parcel. Provided that the Redeveloper has satisfied the requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Township shall have the discretion, subject to any applicable restrictions set forth in statute, ordinance, rule or regulation, to negotiate in good faith with the Redeveloper regarding a long term or short term tax abatement and PILOT program for other components of the Asphalt Parcel. Additionally, Redeveloper shall only pay for its pro rata share of the public use Improvements and Infrastructure Improvements.

k. The Township shall proceed with condemnation of Block 824, Lot 1 in accordance with §3.3 of this Agreement. Upon Redeveloper's request and after good faith negotiations with any other property owner in the Redevelopment Area, the Township shall proceed with condemnation of any other property designated by the Redeveloper pursuant to Section 3.2(c) above

l. Nothing in this Agreement shall be construed to require Township to act in a manner contrary to or inconsistent with existing federal, state, or local statutes, ordinances, rules and regulations.

3.3 Use of Condemnation (Block 824, Lot 1)

Block 824, Lot 1 ("**Beachwood Site**") is a known area of contamination in the State. The Beachwood Site formerly operated as (i) the Beachwood Shopping Center in the portion of the lot that fronts on Route 9 (the "**Shopping Center Parcel,**" with the approximate dimensions shown on Exhibit C), and (ii) the South Brunswick Asphalt Company in the rear portions of the lot (the "**Asphalt Parcel**"). The Shopping Center Parcel contains discrete areas of known contamination, whereas the Asphalt Parcel presents difficult and unknown remediation challenges. The Township shall proceed with condemnation of the Beachwood Site as follows, subject to any unanticipated contingencies that may arise during the condemnation proceeding:

(1) By virtue of the Access and Demolition Agreement, the Township shall permit Redeveloper to enter the Shopping Center Parcel prior to or during the condemnation proceedings to enable Redeveloper to demolish the structures located on the Shopping Center Parcel. The cost of demolition and remediation shall be paid by Redeveloper, subject to the provisions set forth in Section 3.3(2) below.

(2) The Township and Redeveloper have agreed upon a tentative subdivision line for the Shopping Center Parcel as indicated on Exhibit C. Upon finalization and approval by both parties of the proposed subdivision line, the Township shall diligently pursue the subdivision of the Shopping Center

Parcel from the Asphalt Parcel, with Redeveloper's assistance as necessary, and shall convey the Shopping Center Parcel to the Redeveloper at such time as (1) the subdivision has been perfected and (2) the initial demolition of the vertical improvements on the Shopping Center Parcel has been completed and demolition costs to date, together with any projected demolition costs for any remaining demolition, have been calculated.

(3) The valuation of the Shopping Center Parcel, if any, that is determined at the time of condemnation and is paid by Redeveloper at closing shall be offset by the demolition and remediation costs incurred by Redeveloper in accordance with the Access and Demolition Agreement. If the demolition and remediation costs exceed the valuation of the Shopping Center Parcel, Redeveloper shall be entitled to a credit equal to the amount by which the demolition and remediation costs exceed the valuation, which credit shall be applied towards any consideration owed by Redeveloper for the acquisition of any portion of the Asphalt Parcel.

(4) The DEP has approved the acquisition and remediation structure under this Agreement, which approval is a condition to the Redeveloper's obligation to perform hereunder.

(5) The full extent of the environmental contamination on the Asphalt Parcel and other portions of the Redevelopment Area is unknown, and is unlikely to be known until full and complete environmental investigation is performed and the areas are developed. Until such investigation is performed, it cannot be known what portions of the Asphalt Parcel and other portions of the Redevelopment Area can be economically redeveloped pursuant to this Agreement. Once the environmental investigation of the Asphalt Parcel and other portions of the Redevelopment Area has been completed, either (i) by the Redeveloper with (a) funds provided by the Township pursuant to section 3.2(i), or (b) Redeveloper funds that will be credited against the acquisition price of the parcel to be acquired, or (ii) by the Township with HDSRF, PILOT or other funds, the Redeveloper shall, at Redeveloper's discretion, but with Township's input, determine which portions of the Redevelopment Area can be economically remediated and redeveloped and shall seek all approvals to develop such areas.

(6) Upon Redeveloper's receipt of all approvals for the redevelopment of the appropriate portions of the Redevelopment Area, the Township will convey those portions owned by the Township to Redeveloper. The valuation of any such areas shall be at fair market value, or, in the event the parcel was acquired by eminent domain, the value that is determined at the time of condemnation, less any applicable credits for environmental investigation and remediation. The Redeveloper shall remediate the Asphalt Parcel (or any portion thereof) with funds provided by the Township, either from state grants (i.e., HDSRF) or from the proceeds of a RAB bond issue or an amount equal to a portion of PILOT proceeds, in a percentage agreed to in good faith between Redeveloper and Township, which shall not exceed 90%, from the Shopping Center Parcel. In the event the Asphalt Parcel or any other portion of the Redevelopment Area is not subject to remediation and redevelopment, the Township may, in the Township's discretion and

as permitted by the NJDEP, use HDSRF, PILOT or other funds to cap the Asphalt Parcel or any other portion of the Redevelopment Area in a manner consistent with all applicable statutes, rules and regulations. Redeveloper agrees to perform work necessary to cap the Asphalt Parcel with funds provided by the Township

3.4 Appointment of LSRP

Except in the event the Township elects to remediate any property owned by the Township, pursuant to Section 3.1d, the Redeveloper shall retain an LSRP to oversee all phases of the redevelopment including, without limitation, demolition of the structures on the Shopping Center Parcel, and remediation of any portion of the Redevelopment Area. Any governmental funds or loans received by the Township for Remediation shall be used to defray any environmental investigation or remediation costs, to the extent permitted by Law. The Township, at the Township's expense, may engage its own LSRP to coordinate with Redeveloper's LSRP on all aspects of the redevelopment.

Article 4 - The Project

4.1 Project Description. The redevelopment of the Redevelopment Area is contemplated to include residential, commercial and mixed use buildings. Market conditions and site specific issues surrounding the environmental conditions of the Redevelopment Area will ultimately drive the redevelopment of the designated Redevelopment Area. Once the scope and estimated remediation cost of such contamination is known, Redeveloper will submit to the Township a Concept Plan for the first Phase of the redevelopment of the Redevelopment Area based upon the then-current market conditions. The first Phase (the "**Phase 1 Project**") is contemplated to include redevelopment of the Shopping Center Parcel as a sub-Phase to generate PILOT proceeds. If a Financial Agreement is approved as provided in Section 3.2(j) hereof, either (i) proceeds of a RAB bond issue or (ii) an amount equal to a portion of PILOT proceeds, in a percentage agreed to in good faith between Redeveloper and Township, which shall not exceed 90% will be used to remediate the balance of the Redevelopment Area. Redevelopment in the area outside the Shopping Center Parcel may consist entirely of residential buildings, commercial/retail buildings or a combination of commercial/retail buildings and retail/residential mixed-use buildings, depending on the findings of the environmental investigation, estimated remediation costs, market conditions and the availability of acceptable financing. Phase I shall, at a minimum consist of up to 550,000 square feet of commercial retail space with a residential component that shall in all respects be consistent with the Plan. If the Plan needs amendment or modification to be consistent with any Concept Plan, the Township will promptly undertake and diligently pursue study and analysis of a Plan amendment to make the Plan consistent with the Concept Plan. Approval of the Plan amendment shall be the decision of the governing body, with advice and consent of the Township Planner. Such approval shall not be unreasonably withheld.

4.2 Project Scope. The Project shall have the following guidelines:

a. Redeveloper may, at Redeveloper's option and when all Approvals are obtained for the Phase 1 Project or any sub-Phase, or sooner, market any or all portions of the Project for development in conjunction with the permitted uses under the Plan. The Township shall not have approval rights for any user, tenant or occupant, or the placement thereof within any building, including any variations in Design Standards approved by the Planning Board, so long as such use and placement conforms to the Plan.

b. The redevelopment of the Redevelopment Area may include numerous components that require phasing, as determined by the Redeveloper based upon the economic conditions at the time of design, as well as the type of usage and availability of tenants. Redeveloper may sell, assign or otherwise transfer parts or phases of the Redevelopment Area or the Project or seek a combination or joint venture with third parties to carry out such separate projects or phases as part of a Phasing Plan. Except for Permitted Transfers, such sale, assignment or transfer shall be subject to Township approval as mandated N.J.S.A. 40A:12A-9. Upon the completion of a Permitted Transfer or any other transfer approved by the Township, Redeveloper shall be released from all obligations under the terms and conditions of this Agreement with respect to the transferred component, and the subject transferee (i.e., successor in interest) shall be solely responsible for the performance of the Redeveloper's obligation hereunder with respect to the transferred component.

c. The Phasing Plan for construction of the Phase 1 Project, any sub-Phase and all subsequent phases consistent with the Plan of the Redevelopment Area shall be determined solely by the Redeveloper.

d. Redeveloper shall have all naming rights for the Redevelopment Area or any portion thereof or any of the Improvements constructed on or off Site, and be entitled to all proceeds from the naming rights.

4.3 Project Development Schedule. General time frames for the development of the Redevelopment Area are in the Schedule. More specific timeframes will be developed after Redeveloper has determined the scope and estimated remediation cost of contamination, agreed upon remediation contribution amounts with the Responsible Party, acquired title to sufficient lands and obtained all Approvals. The development of the Redevelopment Area shall be comprised of multiple, separate projects, some of which may consist of multiple Phases. References herein to a "Phase" of a project shall mean a portion of a project that is capable of separate ownership and independent operation from other components of the Redevelopment Area. The expeditious completion of each project (and, if applicable, each Phase thereof) is critical to the success of the remediation and redevelopment of the Redevelopment Area, and the Parties shall use commercially reasonable efforts to comply with any deadlines under this Agreement.

4.4 Project Waivers. Each application for a development Phase shall conform in all material respects to the Project guidelines of the Plan, except as modified by the Township or the Planning Board. The Township and/or Board will consider site plan submissions as per the Plan, taking into account the Design Standards. The Redeveloper may, from time to time, request a waiver of the Plan requirements. Provided that any such request does not substantially impair the intent of the Plan and does not present a substantial detriment to public health, safety and welfare, the Township or Planning Board approval of any request for waiver shall not be unreasonably withheld, conditioned, denied or delayed.

4.5 Project Review. The Township will hire a Construction Code Official, at the Redeveloper's expense, to review and expedite site plans, building plans, permits and inspections, exclusively in the Redevelopment Area.

4.6 Performance Bond. The Project Engineer shall submit a performance bond cost estimate(s) in accordance with the municipal land use law of Berkeley Township for any public improvements and offsite improvements of the Project. The estimate shall be accompanied by the Project Engineer's certification, in a form reasonably satisfactory to the Township, as to completeness and accuracy of such estimate. Redeveloper shall post performance bonds with the Township in an amount which shall be either (1) one percent (1%) of the Project Engineer's cost estimate for such offsite improvements, or (2) the minimum amount required by law. The Redeveloper may, at its option, satisfy the performance bond requirement by posting any of the following: cash, surety bond, irrevocable standby letter of credit or other alternate reasonably acceptable to Township. The performance bond(s) required hereunder shall be posted prior to construction of any site improvements. The Project Engineer may prepare multiple cost estimates for the offsite improvements based upon the Phasing Plan and multiple bonds may be required. Any bond required hereunder need not be posted until such time that the portion of the offsite improvement work to which such bond relates is ready to commence. Upon completion of the offsite work improvements to which a performance bond pertains, as certified by the Project Engineer, such performance bond shall be released to Redeveloper.

4.7 Maintenance Bond. The Project Engineer shall determine the maintenance guarantee to be posted by Redeveloper after completion of all public or off-site improvements of the Project. Such maintenance guarantee shall be calculated at either (1) 5% of the cost of the improvements as determined by the Project Engineer's bond estimate, or (2) the minimum amount required by law. Redeveloper may, at its option, satisfy the maintenance bond requirement by posting any combination of the following: cash, surety bond, irrevocable standby letter of credit or other alternate reasonably acceptable to Township. The maintenance bond shall be posted for not more than two (2) years after completion, as certified by the Project Engineer, of the improvements to which such bond pertains. The Project Engineer shall be solely responsible for all inspections of the site improvements during the two-year maintenance guarantee period. Upon certification by the Project Engineer that applicable improvements have been maintained according to the site improvement plan, the maintenance bond shall be released to the Redeveloper.

4.8 Township Compliance. In the event of a conflict between the requirements in this Article and the construction code, municipal land use law, or any ordinance of the Township of Berkeley, the terms hereof shall govern so long as these requirements are otherwise in conformance with the finalized Redevelopment Plan. To the extent the conflict would require the Township to violate any applicable statute, rule or regulation, Redeveloper and the Township shall work together to amend the Redevelopment Plan to resolve such conflict. The Township shall do all things necessary, at its own cost, to ensure its legal compliance with the provisions as set forth herein. With regard to sections 4.6 and 4.7 above, the Township shall, to the extent necessary, and as permitted by law, amend the Plan to provide that the provisions of Sections 4.6 and 4.7 shall be applicable to the Project notwithstanding any contrary language contained in other Township ordinances and/or the Township's administrative code.

Article 5 - Changes to the Plan

5.1 Changes to the Plan. There shall not be any material changes to the Plan that could affect the development of Project or the Site unless requested by or agreed to by the Redeveloper. If the Plan needs to be amended, the Redeveloper shall provide a written request to the Township and the Township will respond within 45 days. The reply will address only the conceptual response; any formal application to amend or change the Plan must follow New Jersey law. If Redeveloper believes the Township has unreasonably denied its consent to an amendment, Redeveloper may exercise any rights or remedies permitted by law.

Article 6 - Infrastructure Improvements

6.1 Public Improvements, Ownership, Future Repairs and Maintenance. The Plan requires the Redeveloper to construct certain public use Improvements and Infrastructure Improvements, including, among other improvements, the construction of public roadways to connect two adjacent municipalities and alleviate traffic congestion along the Route 9 corridor by providing connector roads and a traffic signal within and without the Site boundaries. These improvements, and associated permits and approvals, are a significant investment and cost to the Redeveloper in furtherance of the Plan, certain of which costs are not typically found in the construction of residential for-sale or rental communities, or retail shopping centers of the size proposed for the Project. The Plan also requires the Redeveloper to construct extensive public sidewalk Improvements for pedestrian traffic. If Redeveloper constructs any Improvements or Infrastructure Improvements stated in the Plan or required by the Township, Planning Board or other authority having jurisdiction for public use and/or benefit (such as roadways, sidewalks, street lighting, traffic signals, signs for vehicular or pedestrian traffic including other appurtenances and amenities such as curbs, sewer, water and other utilities or other public use or benefit improvements located within and without the boundaries of the Redevelopment Area), such Improvements shall, upon the earlier of completion by the Redeveloper or the date the Improvement is placed in service, be deeded to the Township free and clear of mortgages and other liens and the Township shall accept such deed(s) of conveyance from the Redeveloper. Upon such conveyance, the Township shall repair, maintain, police and operate all such Improvements, without cost or bond to Redeveloper. Additionally, Redeveloper shall only pay for its pro rata share of the public use Improvements and Infrastructure Improvements.

Township, including any of its outside contractors, shall take all necessary steps and precautions to ensure that any public use Improvements or Infrastructure Improvements deeded or dedicated to the Township are not impaired or restricted in any manner that could unreasonably or unnecessarily affect the use of, or access to or from the Redevelopment Area and/or the Project.

Article 7- Sewer and Water

7.1 Sanitary Sewer and Water Capacity. The Township estimates that there exists sufficient water capacity and capacity in the sewerage treatment facility to accommodate the completion of all development in the Redevelopment Area. Upon Redeveloper's request, the Township shall obtain a report confirming that there is sufficient water supply and sewer treatment capacity reserved for the contemplated development of the Project. If there is insufficient water or sewer capacity, the cost associated with satisfying additional capacity generated by the Project, if any, shall be borne by the Redeveloper, provided that, if the Redeveloper constructs excess capacity, any subsequent developer that utilizes any excess capacity shall reimburse Redeveloper on a pro rata basis. Additionally, the Redeveloper shall be entitled to a credit against any impact fees or connection fees for the value of the water or sewer capacity improvements installed by Redeveloper.

Within 30 days of the date of this Agreement, the Township shall provide Redeveloper with confirmation of the capacity that exists as of that date. The Township makes no representation as to the amount of capacity that may exist in the future.

Article 8 -Transfer of Development Rights

8.1 Non-Applicability. The New Jersey Transfer of Development Rights (TDR) Program is intended to preserve land by transferring the development rights associated with a parcel of land in a sending zone to a receiving zone. The proposed receiving zones under the TDR program are the two Town Centers as delineated in Figure 5 of the Plan. The densities under the Plan for the development of the entire Redevelopment Area are currently limited under State, County and local laws and development guidelines. The Township acknowledges that the Redeveloper will be able to develop up to 550,000 square feet of commercial retail space and at least 700 homes (or their equivalent) [A1]within the first phase under the Plan without cost under the TDR program. As a material inducement for the Redeveloper to enter into this Agreement and to obtain the Approvals, purchase the Parcels, and begin developing the Redevelopment Area as desired by the Township under the Plan, the portion of the Redevelopment Area within this anticipated Phase 1 Project shall be excluded as a receiving zone under the Township's future TDR program and ordinance, to the extent permitted by law. Any subsequent phase shall require TDR purchases for up to an additional 50,000 square feet of commercial retail space and up to an additional 769 homes (or their equivalent), in accordance with the TDR Development Transfer Plan Element of the Master Plan and consistent with Township Ordinances governing same.

Article 9 -Western Boulevard

9.1 Western Boulevard Extension. The extension of Western Boulevard is a key component to realization of the Plan. Without this extension, the redevelopment of the Redevelopment Area will be limited as described herein, which may result in significant financial harm to the Redeveloper. Under the Plan, the need to advance the redevelopment of the Beachwood Plaza at its earliest stage is of critical importance to the Township. The Redeveloper will invest significant resources to obtain the Approvals, to purchase the Parcels within the Redevelopment Area and to construct Infrastructure and other Improvements based upon the full build out of the Redevelopment Area. The Redeveloper is willing to redevelop the Beachwood Plaza portion of the Site and invest significant resources based upon the Township's commitment and agreement to diligently pursue, at the Township's cost, the State, County and local approvals of the Western Boulevard extension, time being of the essence. The Township shall further explore at its own cost, alternative funding mechanisms, such as RAB bonds, other bonds that are repaid through PILOT proceeds or State or County grants for this improvement. Nothing in this Agreement shall commit the Township to paying for the cost of this improvement through self-financing or municipal bonds, or commit the Redeveloper to pay the cost of such improvements. The Township's obligations hereunder are a material inducement for the Redeveloper to enter into this Agreement and to redevelop the Redevelopment Area.

Article 10 - CAFRA

10.1 Jurisdiction. The Redevelopment Area is located within a CAFRA area and will require a CAFRA Individual Permit, at Redeveloper's expense.

10.2 Impervious Coverage. The Redevelopment Area is located within a Coastal Town Center area, as defined in CAFRA, which allows up to 80% impervious coverage. The Redeveloper requires that the impervious coverage of the Phase I Project not exceed 80%.

Article 11 - Affordable Housing

11.1 Affordable Housing.

11.1 Requirements. Under current affordable housing laws, the Phase 1 Project will not generate any affordable housing obligation for either Party, including the "Statewide Non-Residential Fee Act," N.J.S.A. 40:55D-8.1 to -8.8, since the Redeveloper is merely replacing an existing shopping center with a new shopping center. If new affordable housing laws are promulgated or enacted, the Township and Redeveloper agree to negotiate in good faith to address any mandatory affordable housing requirements imposed by such new laws.

Article 12 - Approvals

12.1 Jurisdiction. The expeditious approval of individual portions of the Redevelopment Area by appropriate government boards and bodies is in the best interest of the Project. The Parties will cooperate with each other as required under this Agreement in obtaining the Approvals. To that end, Redeveloper shall provide quarterly written reports on the Approval status to the Township. The Parties and/or their representatives shall meet at least quarterly to discuss the progress of completion of their respective duties and obligations under this Agreement. The time and place of the meetings shall be mutually agreed upon.

12.2 Applications. The Township shall sign and cooperate in the submission of the appropriate applications consistent with the Plan and in furtherance thereof to other governmental bodies. The Redeveloper shall apply for and obtain all Approvals at its own cost and expense, except for the Western Boulevard extension, which approvals the Township shall seek at their own cost and expense. The Township shall perform any and all acts necessary at its own cost and expense to enable Redeveloper to obtain the Approvals. Redeveloper must have sufficient interest in land comprising a project to have standing to make all Approval applications and the Township will provide, upon request, written confirmation of Redeveloper's right to make such applications.

Article 13 - Completion of Projects

13.1 Certificate of Occupancy. A final or temporary Certificate of Occupancy shall be issued for any project (or any Phase or part thereof), regardless of whether the Township shall have issued a Certificate of Completion and Compliance for such project (or the part thereof), so long as such project (or such part thereof) meets the Township's requirements for the issuance of a final or temporary Certificate of Occupancy, as then promulgated and administered by Township's building department or other appropriate office. A final or temporary Certificate of Occupancy for a residential unit shall constitute a Certificate of Completion and Compliance for such unit, whereupon such unit shall be released from the obligations, liabilities and covenants under this Agreement. The Township may issue a Certificate of Completion and Compliance for any project (or any applicable Phase or portion thereof) although no Certificate of Occupancy (or temporary Certificate of Occupancy) has been issued, or applied for, with respect to any project (or any part thereof).

13.2 Certificate of Completion and Compliance. Promptly after the substantial completion of the Improvements with respect to any project (or any Phase or portion thereof), the Township shall issue an appropriate instrument certifying such Completion (a "**Certificate of Completion** "). The Township's issuance of a Certificate of Completion as to any project (or a component thereof) shall be deemed a conclusive determination by the Township that all the obligations of Redeveloper (or any subsequent Redeveloper) under this Agreement as to such project (or such component thereof) has been fully satisfied. If any dispute arises regarding whether the Improvements relating to any project (or component thereof) has been substantially completed in accordance with this Agreement, either Party may submit the dispute to Arbitration.

13.3 Effect of Certificate of Completion. Upon the issuance of a Certificate of Completion for any project (or component thereof), the provisions of this Agreement shall no longer encumber the property comprising such project (or component thereof); provided, however, that nothing in this sentence shall be deemed to abrogate the provisions of any other documents theretofore delivered pursuant to this Agreement with respect to the property comprising the project (or component thereof), including, without limitation (and for example only), any deeds (including any restrictions therein), declarations, certifications, Financial Agreements, PILOT agreements, Bonds, etc.

Within thirty (30) days following a written request by Redeveloper, the Township shall execute and deliver to (a) Redeveloper (or any subsequent Redeveloper) and/or (b) a third party designated by Redeveloper written confirmation that the Certificate of Completion and Compliance has been issued.

Article 14 -Project Funding

14.1 Mortgage Financing and Contingencies. The redevelopment of the Redevelopment Area and each component thereof requires significant financing. In addition to the required financing, the Redeveloper shall have to make equity contributions. Between the equity and financing requirements, today's economy and that of the foreseeable future, there may be insufficient private funding to construct the Project as desired by the Redeveloper and as permitted by the Plan. In furtherance of the redevelopment of the Redevelopment Area and any offsite improvements, the Township will endeavor, to the extent possible, to use all available tools and remedies at its disposal, including, without limitation, to consider in good faith any applications for Financial (PILOT) Agreements, ERG and RAB programs, or any other grant or financing mechanisms that exist at both the State and county level, to assist the Redeveloper with the successful redevelopment of the Redevelopment Area and, ultimately, the Township's success. Such tools and remedies may include using a portion of Financial (PILOT) Agreement income to pay the debt service on bonds issued for infrastructure improvements. The Township reserves the right to require Redeveloper to provide such financial information as is reasonably required to confirm that, "but for" these tools and remedies, the redevelopment cannot proceed.

Any financing for the redevelopment shall be at the interest rate that is available to the highest credit-worthy borrowers at the time. If any Financing Institution fails to treat the Redeveloper as the highest credit worthy borrower, and Redeveloper cannot obtain acceptable financing, it shall not be an Event of Default hereunder provided that Redeveloper submits written documentation evidencing that it made commercially reasonable attempts to secure financing.

14.2 Grants and Loans. Federal, State and County loans and grants are essential to the redevelopment of the Redevelopment Area. Each Party shall cooperate to attempt to seek any such Federal, State and

County loans or grants for the redevelopment. The Township and the Redeveloper shall prepare grant and loan applications, satisfactory to each Party, for funding for various improvements needed for the Project, not limited to infrastructure and utilities that are deemed necessary and appropriate. The Township shall submit such applications to the applicable Federal, State or local governmental authority to attempt to obtain grant or loan assistance for these public improvements. All application costs shall be borne by the Redeveloper.

14.3 Tax Abatement or Exemption. The Township shall consider in good faith any application requesting the issuance of RAB bonds and/or the granting of a long term tax abatement, and if approved, shall negotiate the terms of a Financial Agreement (Tax Exemption) to utilize for all components of the Redevelopment Area.

Article 15 - Representations

15.1 Covenants, Representations and Warranties of Redeveloper. The covenants, representations and warranties of Redeveloper in this Agreement shall be true and correct, in all material respects, as of the date of execution of this Agreement. Redeveloper covenants, represents and warrants as follows:

a. Redeveloper is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of New Jersey, with full company authority to enter into this Agreement and to perform its obligations hereunder.

b. Redeveloper has the experience and expertise to perform the contemplated transactions hereunder.

15.2 Covenants, Representations and Warranties of Township. The covenants, representations and warranties of Township set forth in this Agreement shall be true and correct, in all material respects, as of the date of execution of this Agreement. The Township covenants, represents and warrants as follows:

a. Township has complete power and authority to enter into this Agreement. No approval, authorization, license, permit or filing with the State, County, municipal or other governmental commission, board or agency or other action of any kind or nature whatsoever is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

b. Township has the financial capability and expertise necessary to perform the contemplated transactions hereunder.

c. Township has complied with statutory requirements and directives from any governmental or other authority having jurisdiction and has taken all required and necessary steps precedent to adopt the Plan.

d. Township has complied with all statutory requirements and directives from any governmental or other authority having jurisdiction and has taken all required and necessary steps precedent to name Redeveloper as the exclusive redeveloper of the Redevelopment Area.

e. Township has taken, or is taking, all steps and/or actions necessary or required for submission of the Plan to the State Planning Commission for endorsement.

f. Township has taken, or is taking, all steps and/or actions necessary or required to work with Ocean County regarding the extension of Western Boulevard to the Redevelopment Area.

g. Township has complied with any and all laws, rules, regulations and directives of the state, county and local governments where a failure to so comply could have a material adverse effect on any aspect of the redevelopment as contemplated by this Agreement and the Plan.

h. Township shall reasonably cooperate with the Redeveloper to amend the Plan upon request by Redeveloper to accommodate the redevelopment consistent with the intent of the Plan.

i. Certain property interests within the Redevelopment Area may need to be acquired to make redevelopment of the Redevelopment Area possible. These interests may include real property, utility easements, rights of way, street extensions and other interests for which the Township shall lawfully exercise its condemnation authority if reasonably requested to do so by the Redeveloper. Redeveloper shall demonstrate, to the Township's reasonable approval, that it has negotiated in good faith with such property owners to acquire property interests needed, prior to the Township exercising their power of eminent domain. The parties shall work in good faith to identify such interests that need to be acquired and the date by which such acquisition must be accomplished to permit development of the Redevelopment Area in accordance herewith. The cost of such acquisitions, shall be paid in advance by Redeveloper and prior to transfer of title to Redeveloper. Any such acquisition shall be identified by the Redeveloper at the time of its site plan submission for the affected phase of the Redevelopment Area. If the Township is unable to acquire any property interest through eminent domain, Redeveloper may elect to redevelop such areas that Redeveloper and/or the Township are able to acquire. Alternatively, Redeveloper may elect to terminate this Agreement, in which event the Redeveloper's designation as Redeveloper shall terminate. In the event this Agreement is terminated, the Township may, at its option exercised within 180 days following the Redeveloper's withdrawal, repurchase any and all parcels acquired by Redeveloper for fair market value in accordance with Section 3.2(b). The Township acknowledges that Redeveloper has engaged in good faith negotiations with the owner of the Beachwood Site to acquire such parcel, but has been unable to reach an agreement with the owner.

<u>15.3 Continuing Assurances</u>. Either Party, shall, upon request, execute all documents, instruments, certifications and/or provide further assurances and take all steps reasonably necessary or appropriate to implement, confirm or perfect the representations and the transactions as provided under this Agreement.

Article 16 - Termination and Default

16.2 Withdrawal by Redeveloper. Redeveloper may, at any time and in its sole and absolute discretion, withdraw from this Agreement by providing written notice to the Township at least 30 days prior to withdrawal. If Redeveloper withdraws, the Township shall, within thirty (30) calendar days of such withdrawal, refund to the Redeveloper any remaining funds in the Redeveloper escrow account. Upon such reimbursement, this Agreement shall immediately terminate, shall have no further force or effect, and neither Party shall have any liability of any kind or nature whatsoever to the other, other than as provided in Article 16 of this Agreement. If such withdrawal results from a Township Event of Default, Redeveloper shall be entitled to all rights and remedies set forth in Section 16.4.2 of this Agreement. Notwithstanding the foregoing, all out of pocket outstanding costs or balances accruing to professionals as contemplated by this Agreement prior to the Redeveloper's withdrawal shall be paid by Redeveloper. In the event this Agreement is terminated, the Township may, at its option exercised within 180 days following the Redeveloper's withdrawal, repurchase any and all undeveloped parcels acquired by Redeveloper for fair market value in accordance with Section 3.2(b). Because of the extraordinary nature of withdrawal from this Agreement, Redeveloper agrees to act in good faith in withdrawing from this Agreement.

16.3 Event of Default. An event of default ("Event of Default") can occur under any one or more of the following circumstances:

a. Either Party fails to obtain the Approvals for any Phase of the Project as required under or contemplated by the Schedule to be agreed upon, subject to force majeure, and such failure is not cured in accordance with Section b, below; or

b. Either Party breaches, subject to force majeure, any provision of this Agreement and such failure continues for one hundred and twenty (120) days after receipt of written notice of such failure (a "**Default Notice**"), provided that, if such breach is incapable of cure within 120 days, the time to cure shall be extended until the breach is cured, provided that the Party diligently proceeds to cure the breach.

c. The failure or inability of the Township to obtain approvals for the Western Boulevard Extension shall not be deemed an Event of Default, and such failure shall not prevent the redevelopment of the Shopping Center Parcel.

16.4 Rights and Remedies.

16.4.1 Upon the occurrence of any Redeveloper Event of Default that remains uncured after notice and cure as provided for in this Agreement, the Township shall have the right to terminate this Agreement. If this Agreement is terminated by the Township, the Township shall terminate the Redeveloper's designation as the Redeveloper of the Project Site and the Township shall be reimbursed for all reasonable outstanding costs associated with the Project up to the date of termination, provided such costs are not under protest or dispute. The Escrow Fund may be used for this purpose, but Redeveloper shall be responsible for reimbursing all reasonable outstanding costs of the Township up to the date of termination, regardless of the amount remaining in the Escrow at the time of termination. This provision shall survive termination of this Agreement. In the event this Agreement is terminated for any reason except as a result of the Township's Default, Redeveloper shall deliver to the Township, within ten (10) days after final adjudication, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by Redeveloper and third parties with respect to the Project Site and the Project and all documents, reports, permits and approvals obtained by Redeveloper relating to the Project Site and the Project that are not subject to privilege and/or are confidential in nature. . If Township prevails in any litigation resulting from a Redeveloper Event of Default, reimbursement of all reasonable costs and expenses including, without limitation, attorney fees and costs.

16.4.2 Upon a Township Event of Default, the Redeveloper shall be entitled to all rights and remedies available at law or in equity including, without limitation, monetary damages and all equitable remedies, including specific performance of this Agreement, and, if Redeveloper prevails in any litigation resulting from a Township Event of Default, reimbursement of all reasonable costs and expenses including, without limitation, attorney fees and costs.

16.4.3 The failure of either party to avail itself of any remedy provided for in this Agreement, or either party's delay in seeking such remedy, shall not be deemed a waiver of the rights to be enforced thereby or of any right of enforcement that accrue in the future.

16.5 Holder Rights. If, as a result of a default by the Redeveloper under any agreements executed by the Redeveloper and any Holder, the Holder forecloses against any lien that it has with respect to the Redevelopment Project, the Township shall forebear from the enforcement of any remedies that it may have against the Redeveloper under this Agreement to permit such Holder or its successor, to assume the obligations of the Redeveloper under this Redevelopment Agreement. The assumption of Redeveloper's obligations under this Redevelopment Agreement by Holder or its successor shall be subject to Township approval, not to be unreasonably withheld.

Article 17 - Force Majeure

17.1 Force Majeure. Force Majeure Events. Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of any of the following acts, events or conditions or any combination thereof ("Force Majeure Events") that (i) have had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Agreement and (ii) are beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Agreement:

a. An act of God, lightning, blizzards, hurricane, earthquake, acts of a public enemy, war, terrorism, blockade, freight embargoes, epidemics, insurrection, riot or civil disturbance, sabotage or similar occurrence, or the Redeveloper's inability to perform any obligation hereunder as a result of any Township action or omission, the consequential effect of such events (e.g., impact on market conditions) shall be considered a Force Majeure Event.

b. A landslide, fire, explosion, flood, nuclear radiation or similar occurrence not created by any willful or grossly negligent act or omission of either party hereto;

c. The order, judgment, action and/or determination of any federal, State or local court, administrative agency or governmental authority with jurisdiction within the Township, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, or negligent action or inaction of the party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;

d. Conditions in the Real Estate market impacting Redeveloper's ability to rent space, sell proposed units or obtain required financing. The Force Majeure events contained in this subsection will be deemed to have ceased to exist as of a date of eighteen (18) months from its initial occurrence. Upon Redeveloper's demonstration of continued negative market impacts on the proposed project, through no fault of Redeveloper, Township shall extend a finding of a Force Majeure event for an additional eighteen (18) months.

e. The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any Approval which is essential to the implementation of the Project (as evidenced by written notices from the governmental authority having jurisdiction over such matter), or a third party challenge to any Approval, but (i) any such suspension, termination, interruption, denial or failure of renewal or issuance, or any third party appeal of an approval shall not be the result of the action or inaction of the party relying thereon and (ii) neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;

f. Strikes or similar labor action by equipment manufacturers, suppliers of material and/or transporters of same;

g. Acts or omissions of another party, except in conformance with this Agreement or, as to the Redeveloper, acts or omissions of the Township.

h. The presence of environmental contamination or pollution or the discharge of hazardous material within the Redevelopment Area, to the extent that the presence of such contamination or pollution or such discharge of such hazardous materials shall not have been caused by the willful, intentional or gross negligent actions of the Redeveloper, its employees, agents consultants, contractors or subcontractors.

i. The intentional or unintentional damage or destruction of any portion of the Project by any parties, including without limitation, contractors of Redeveloper, as long as the Redeveloper has implemented and complied with customary and reasonable security measures and has maintained customary and reasonable insurance against the occurrence of such acts.

17.2 <u>Force Majeure Events Strictly Construed</u>. The parties acknowledge that the acts, events or conditions set forth in Section 17.1 above are intended to be the only acts, events or conditions which may (upon satisfaction of the conditions specified above) constitute Force Majeure Events. During the pendency of any Force Majeure Event that affects part of the Project, Redeveloper shall, if commercially reasonable under the circumstances, continue to perform its obligations with respect to the remainder of the Project. The existence of a Force Majeure Event shall not prevent a party from declaring the occurrence of an Event of Default by the party relying on such Force Majeure Event, as long as the Event of Default is not the result of Force Majeure.

Article 18 – Intentionally Omitted

Article 19 – Developer Escrow Fund

19.1. <u>Acquisition and Project Costs</u>. To the extent permissible by any statute, rule or regulation, the Redeveloper shall be exempt from paying any developer fees required by any Township ordinances. The Redeveloper shall be responsible for all costs incurred by the Redeveloper in implementing the Project and satisfying its obligations under this Agreement. The Redeveloper shall be obligated to pay for the Township's reasonable actual costs of services of contract professionals to provide advice and support to the Township in undertaking its obligations under this Agreement (collectively, the "**Project Costs**"). The Township reserves the right to retain additional professionals as necessary and shall advise the Redeveloper of any additional professionals to be retained.

The Redeveloper shall maintain an escrow account with the Township with an initial balance of $25,000, which escrow shall be replenished by the Redeveloper within thirty (30) days of a written notice by the Township that the account balance is below reaching $10,000. No additional cost shall be incurred by Township, Township Employees or Township Professionals, if and while the escrow account has a zero balance. The Township shall diligently review the Project Costs incurred by its professionals and determine eligibility for payment of such costs from the escrow. The Redeveloper shall receive a copy of all Project Costs from the Township on a monthly basis. The Redeveloper shall have the right to review and comment on the Project Costs. The Redeveloper's comments on the Project Costs shall be in writing and shall not prevent the Township from paying Project Costs. However, if the Parties disagree on the acquisition costs that Redeveloper shall pay for any parcel subject to Redevelopment under this Agreement or and Project Costs, the Parties shall work diligently and in good faith to resolve any such disagreement, while maintaining the minimum balance in the escrow account. The Redeveloper further acknowledges and agrees that the obligation to pay the Township for the Project Costs shall apply to all such costs incurred prior to the termination of this Agreement. The Redeveloper's obligations pursuant to this Section shall survive the termination of this Agreement.

Article 20 - Miscellaneous Provisions

20.1 Paragraph Headings. The headings and numbering of paragraphs and sections of this Agreement are for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

20.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New Jersey and any litigation relating to this Agreement shall be brought in the Superior Court of New Jersey and venued in the County of Ocean, Superior Court of New Jersey after the Parties have availed themselves of arbitration procedures.

20.3 No Significance of Party Drafting. No significance shall be attributed in presumption or otherwise of the Party drafting the provision or provisions in question in the construction or interpretation of this Agreement.

20.4 Amendments to Agreement. This Agreement represents the entire agreement by and between the Parties with respect to the redevelopment of the Redevelopment Area, and supersedes all previous written or oral communications between the Parties. Any amendment to this Agreement shall be in writing and recites that it is l entered into to modify the terms of this Agreement.

20.5 Conflict. In the event of a conflict or inconsistency between this Agreement and the Plan, this Agreement shall govern and the Parties agree to do all things reasonably necessary to resolve any such conflicts or inconsistencies in favor of this Agreement.

20.6 Severability. If any provision, term, paragraph or other portion or portions of this Agreement is held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable so that such determination shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with provisions of this Agreement.

20.7 Notices. Formal notices, demands and communications between the Township and the Redeveloper required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the earlier to occur of (a) if hand delivered, the date of the actual delivery, (b) if sent with a nationally recognized overnight courier services, fees prepaid, on the first business day following receipt of the notice by the courier service for delivery or (c) if by facsimile or Portable Document Format email ("**PDF**"), on the upon receipt of confirmed e-mail delivery or facsimile transmission day of such facsimile or PDF . Any

Party hereto, by notice given as above, may change the address to which future notices or copies of notices may be sent. All notices shall be sent:

If the Redeveloper: BERKELEY REDEVELOPERS, LLC
1260 Stelton Road
Piscataway, New Jersey 08854
Attn: Jack Morris
Fax 732-985-5588
Ph. 732-985-1900

BERKELEY REDEVELOPERS, LLC
70 Grand Avenue, Suite 109
River Edge, NJ 07661
Attn: Joseph Marino
Fax 973-779-0493
Ph. 973-779-2100

BERKELEY REDEVELOPERS, LLC
c/o US Home
2465 Kuser Road
Hamilton, NJ 08690
Attn: Robert J. Calabro
Fax (609) 245-2230
Ph. (609) 245-2200, ext 161

with a copy to: Sheryl Weingarten, Esq.
Weingarten Law Firm, LLC
1260 Stelton Road
Piscataway, New Jersey 08854
Fax 732-985-5588
Ph. 732-985-1900

Lennar Corporation
700 N.W. 107th Avenue
Miami, Florida 33172
Attention: Corporate Counsel
Fax: (305) 229-6650
Phone: (305) 229-6584

Fox Rothschild LLP
15 Maple Avenue
Morristown, New Jersey 07960

Attention: Deirdre E. Moore, Esq.
Fax: (973) 326-7103
Phone: (973) 326-7101

If to Township: Township of Berkeley
627 Pinewald Keswick Road
Bayville, New Jersey 08721
Attn: Mayor
Fax ____________________
Ph. ____________________

With a copy to: Dilworth Paxson, LLP
331 Newman Springs Rd.; Bld 1, Ste 136
Red Bank, NJ 07702
Attn: Joseph A. Clark, Esq
Fax (732) 378-6800
Ph (732) 383 -5532

20.8 Mutual Benefit. This Agreement is for the mutual benefit of the Parties hereto. Except as otherwise expressly stated herein, all costs and expenses incurred in connection with this Agreement or any amendments hereto, shall be the responsibility of the Party incurring such costs and expenses.

20.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

20.10 Estoppel Certificates. Within fourteen (14) days following written request therefore by a Party hereto, or of any Holder, the other party shall issue a signed certificate ("Estoppel Certificate") either stating that this Redevelopment Agreement is in full force and effect and that there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any. If the Estoppel Certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of Estoppel Certificates may be requested per year.

20.11 Modifications Requested by a Holder. If any Holder reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Township shall reasonably cooperate with the Holder and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Township, as provided in this Redevelopment Agreement.

20.12 Non-Liability of Members and Employees of Redeveloper. No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any Event of Default hereunder by the Redeveloper or for any amount which may become due to the Township, or its successors, on any obligation under the terms of this Agreement.

20.13 Counterparts. This Agreement may be executed in one or more counterparts and, when each party has executed and delivered at least one counterpart, this Agreement shall be binding on the parties and such counterparts shall constitute one and the same instrument.

SIGNATURE PAGE

TOWNSHIP:

Township of Berkeley

By: ______________________

REDEVELOPER:

BERKELEY REDEVELOPERS, LLC

By: LENNAR BERKELEY LLC, a New Jersey limited liability company, Member

By: ______________________
Name: Robert C. Cabric
Title: Manager

By: M&M at Berkeley LLC, a New Jersey limited liability company, Member

By: ______________________
Name: Jack Morris
Title: Manager

118441231_1

Exhibit A

Access and Demolition Agreement

ACCESS AND DEMOLITION AGREEMENT

This Access and Demolition Agreement ("Agreement") is dated as of June 22, 2015 ("Effective Date") between **BERKELEY REDEVELOPERS, LLC**, having an address of 1260 Stelton Road, Piscataway, New Jersey 08854 ("REDEVELOPER") and **THE TOWNSHIP OF BERKELEY**, a municipal corporation of the State of New Jersey with offices at the Municipal Building, 627 Pinewald Keswick Road, Bayville, New Jersey 08721 (the "TOWNSHIP").

RECITALS:

WHEREAS, TOWNSHIP has acquired by eminent domain certain real property commonly known as Block 824, Lot 1 on the TOWNSHIP tax maps (the "Property") for purposes of redevelopment or otherwise; and

WHEREAS, TOWNSHIP designated the REDEVELOPER as the sole redeveloper of a Redevelopment Area that includes the Property; and

WHEREAS, TOWNSHIP has agreed to provide REDEVELOPER with access to the Property to demolish the structures on the Property designated as Building 1 and 2 on Exhibit A and to perform other demolition work, as more particularly described in Exhibit B and C (the "Demolition Work");

WHEREAS REDEVELOPER and TOWNSHIP agree that the Demolition work contemplated by this Agreement is a necessary beginning to the redevelopment work as a whole;

WHEREAS, TOWNSHIP has entered into an Access and Demolition Agreement with Beachwood Mall, LP ("Owner"), dated DATE, to demolish some or all of the existing structures on the Property;

WHEREAS, the Access and Demolition Agreement permits the TOWNSHIP, its contractors, subcontractors and agents, including any REDEVELOPER appointed by the TOWNSHIP (collectively, the "TOWNSHIP PARTIES") to enter upon the Property during normal business hours for purposes of performing Demolition Work, any environmental inspection, and testing reasonably deemed necessary by the TOWNSHIP;

WHEREAS REDEVELOPER qualifies as a TOWNSHIP PARTY within the meaning of the Access and Demolition Agreement between TOWNSHIP and Owner;

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the TOWNSHIP and REDEVELOPER agree as follows:

1. The foregoing Recitals are incorporated herein. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Agreement.

2. Access. At any time during the term of this Agreement, REDEVELOPER shall have the right to enter upon the Property for performing the Demolition Work , inspections, and any related activities thereto.

3. Demolition Work.

(a) Except as otherwise provided in this Agreement or any Exhibit hereto, REDEVELOPER shall do or cause to be done such work as is more particularly described on Exhibit B (collectively, the "Demolition Work").

(b) Except for utility disconnect letters and the demolition permit, which shall be provided by the TOWNSHIP in conjunction with the Owner of the Property, REDEVELOPER shall obtain all permits and approvals necessary or required for the Demolition Work and shall accomplish the Demolition Work including, but not limited to, the disposal of materials in compliance with all applicable laws, statutes, codes, rules, regulations, orders or ordinances of any kind whatsoever issued by any federal, state, county, municipal or other governmental body or agency asserting jurisdiction over the Demolition Work and/or persons engaged in performing the Demolition Work (collectively, "Applicable Laws") and obtain and deliver to the TOWNSHIP any required certificates or other documentation evidencing completion of the Demolition Work in accordance with Applicable Laws.

(c) During the Demolition Work, REDEVELOPER shall maintain the Property in a manner consistent with customary construction practices and shall remove from time to time any accumulations of debris, refuse, or other waste materials that may cause a public nuisance or create a hazard. Upon completion of the Demolition Work, REDEVELOPER shall remove any remaining waste materials, tools, construction equipment, machinery and surplus materials generated by the demolition from the Property. Any recycled materials that REDEVELOPER intends to use to redevelop the Property may remain onsite in a location agreed upon with the TOWNSHIP, provided that the recycled material meets NJDEP unrestricted use criteria. REDEVELOPER shall maintain a security fence around the Shopping Center Parcel during the term of this Agreement consistent with customary construction practices.

(d) All cost and expense incurred in connection with the Demolition Work shall be the responsibility of REDEVELOPER (including, without limitation, contingency fees and costs, legal fees, insurance, administrative and management fees and costs, overhead, disposal or other tipping fees, permit fees and remediation costs).

(e) REDEVELOPER shall notify the TOWNSHIP within two (2) business days of its becoming aware of any previously unknown environmental conditions or contamination on or affecting the Property.

(f) TOWNSHIP makes no representations or warranties regarding the existing physical conditions of the Property, including but not limited to those relating to structural, health or safety, or compliance with any laws, codes, or ordinances, or the environmental condition of the Property.

(g) If any person or party files a construction lien against the Property or any building thereon as a result of the Demolition Work, REDEVELOPER shall, at its expense, satisfy, remove or discharge such lien by bonding, payment or otherwise within sixty (60) days after notice to REDEVELOPER of the filing or assertion thereof. If REDEVELOPER fails to remove such lien (in addition to all other rights and remedies available to the TOWNSHIP hereunder) the TOWNSHIP may satisfy, remove or discharge such lien and REDEVELOPER shall pay the same to the TOWNSHIP upon demand.

4. Term. The term of this Agreement shall commence on the date hereof and terminate on the earlier to occur of (i) the termination of this Agreement by REDEVELOPER following a default by TOWNSHIP as described in Section 8 hereof, (ii) the completion of the Demolition Work and removal of

any remaining waste materials, tools, construction equipment, machinery and surplus materials generated by the Demolition Work, (iii) December 31, 2015, or (iv) the Redeveloper acquiring title to the Shopping Center Parcel from the Township.

5. Reimbursement. TOWNSHIP and REDEVELOPER recognize that demolition of the structures on the Property designated as Building 1 and 2 on Exhibit A is a necessary initial step in the redevelopment process. TOWNSHIP recognizes that the demolition, which will be at REDEVELOPER's expense, is a benefit to the TOWNSHIP because demolition removes a known health and safety hazard . Therefore, in the event that TOWNSHIP is unable, through no fault of REDEVELOPER (which shall include, but not be limited to, the failure of TOWNSHIP and REDEVELOPER to enter into a Redeveloper Agreement, through no fault of REDEVELOPER, within 30 business days of the date of this Agreement), to convey the Shopping Center Parcel to Redeveloper within forty five (45) days after taking title to the Property, REDEVELOPER may, in REDEVELOPER's sole discretion, issue a reimbursement notice (the "**Reimbursement Notice**") to TOWNSHIP. TOWNSHIP shall then reimburse REDEVELOPER for the actual costs incurred by REDEVELOPER for the demolition of the structures on the Property designated as Building 1 and 2 on Exhibit A. REDEVELOPER shall provide all reasonably required documentation necessary to support its request for reimbursement at the same time it provides the Reimbursement Notice to the TOWNSHIP. Because of the budgetary process, TOWNSHIP shall have 180 days from TOWNSHIP's receipt of the Reimbursement Notice to review the documentation, to discuss the documentation with REDEVELOPER, and to reimburse REDEVELOPER, which reimbursement may include, but is not limited to, the issuance of a bond or bonds. If the TOWNSHIP has not reimbursed REDEVELOPER within 180 days from TOWNSHIP's receipt of the Reimbursement Notice, interest shall be due and accrue on the amount due to REDEVELOPER commencing as of the date of the TOWNSHIP's receipt of the Reimbursement Notice at the rate of at the Wall Street Journal Prime Rate, plus five percent (5%).

6. Insurance. REDEVELOPER shall obtain, at its sole cost and expense, and maintain or cause to be maintained, if applicable, at all times during the term of this Agreement: (a) commercial general liability insurance (including personal injury liability coverage) with a minimum per occurrence limit of at least $1,000,000.00 and general aggregate limit of $2,000,000.00; (b) automobile liability insurance covering owned, hired and non-owned vehicles, providing coverage of $1,000,000.00 combined single limit for bodily injury and property damage; (c) excess umbrella liability insurance coverage insuring losses in excess of the insurance required under (a) and (b), up to a total limit of $5,000,000.00 on an occurrence basis; (d) worker's compensation insurance maintained in accordance with statutory requirements; (e) employer's liability insurance in the amount of $1,000,000 for each accident for bodily injury, $1,000,000 policy limit for bodily injury by disease, and $1,000,000 for each employee for bodily injury by disease; and (f) if applicable with respect to any REDEVELOPER Party, contractor's pollution liability insurance providing coverage of not less than $1,000,000.00. All commercial general liability insurance maintained by REDEVELOPER hereunder shall have the following endorsements: (i) products and completed operations coverage, (ii) contractual liability, (iii) broad form property damage and personal injury, and (iv) underground explosion and collapse coverage. TOWNSHIP (and OWNER , if necessary) shall be named as an additional insured (except workers compensation) on all policies, and such policies shall be considered primary insurance without recourse and non-contributing to any similar insurance carried by REDEVELOPER. All insurance certificates obtained by REDEVELOPER shall contain a provision that coverage afforded under the policies evidenced by such certificates will not be cancelled or materially changed without at least thirty (30) days' prior written notice to REDEVELOPER and Owner. All liability insurance required to be carried by REDEVELOPER shall contain broad form contractual liability insurance coverage insuring REDEVELOPER's indemnity obligations to TOWNSHIP, including its contractors, subcontractors and agents under this Agreement. All policies carried by REDEVELOPER shall include a waiver of subrogation endorsement.

7. Indemnity. Except to the extent that any of the following arise from the negligence or willful misconduct of any of the TOWNSHIP, and the TOWNSHIP's employees, agents, independent contractors and representatives (collectively, the "**Indemnified Parties**"), REDEVELOPER shall indemnify, defend and hold harmless the Indemnified Parties against all claims, demands, actions, suits, causes of action, damages, liabilities, judgments, losses of any kind whatsoever, penalties, costs and expenses including, but not limited to, court costs and attorneys' fees occurring as a result of any alleged injuries, deaths, illegal acts or violations of any statute or incidents or any other cause whatsoever which may in any way accrue, arise out of or result from REDEVELOPER performing the Demolition Work.

8. Attendance. A representative of the TOWNSHIP may, at its option and at its sole expense, be present during the conduct of any Demolition Work at the Property, provided that such representative complies with the REDEVELOPER's site health and safety requirements. TOWNSHIP shall give the REDEVELOPER reasonable prior written notice of the time that such representative wishes to arrive on the site present.

9. Default.

(a) If REDEVELOPER fails to perform or observe any agreement or condition under this Agreement beyond any applicable cure and/or grace period contained in this Agreement, and if REDEVELOPER shall fail to cure said failure within thirty (30) calendar days after receipt of written notice of said failure from the TOWNSHIP (or such longer period as is reasonably required to cure such failure if the failure is not of a nature that can be cured within said thirty (30) calendar day period, provided REDEVELOPER has commenced the cure of such default within the thirty (30) calendar day period and thereafter diligently prosecutes such cure), the TOWNSHIP may immediately, or at any time thereafter, and without further notice, terminate this Agreement, and REDEVELOPER shall forthwith quit the Property.

(b) If, after ten (10) business days following the expiration, termination or cancellation of this Agreement, REDEVELOPER has failed to remove any property brought upon the Property by REDEVELOPER, the TOWNSHIP may notify REDEVELOPER to remove said property at REDEVELOPER's own cost and expense. If the TOWNSHIP notifies REDEVELOPER to remove said property and REDEVELOPER fails to do so within the thirty (30) calendar days, then, upon such failure, the TOWNSHIP may, in addition to any other remedies available to it and upon notice to REDEVELOPER, remove said property and store the same in the name and at the expense of REDEVELOPER or those claiming through or under REDEVELOPER under any usual or proper form of warehouse receipt, whether or not authorizing the sale of said property for non-payment of storage charges, and without in any way being liable for conversion or negligence of any person in caring for said property while in storage. In such event, REDEVELOPER agrees to pay to the TOWNSHIP, upon demand, all removal and storage costs incurred by the TOWNSHIP.

(c) If TOWNSHIP shall fail to perform or observe any agreement or condition under this Agreement, and if TOWNSHIP shall fail to cure said default within ten (10) business days after written notice of said default from the REDEVELOPER (or such longer period (not to exceed thirty (30) days) if said default is not of a nature that can be cured within said ten (10) business day period, provided TOWNSHIP has commenced the cure of such default within said ten (10) business day period and thereafter prosecutes the curing of said default with due diligence), then the REDEVELOPER may immediately, or at any time thereafter, and without further notice, terminate this Agreement, and REDEVELOPER shall forthwith quit the Property.

10. Environmental Inspection and Testing. REDEVELOPER shall retain a Licensed Site Remediation Professional ("LSRP") to ensure compliance with any and all regulatory requirements applicable to the Demolition Work. TOWNSHIP's Appointed Site Representative may, at TOWNSHIP's expense, be on site during any environmental assessment and work that requires an LSRP oversight. If required under the NJDEP regulations, REDEVELOPER's LSRP shall prepare a report documenting the disposal of any regulated materials resulting from the Demolition Work. REDEVELOPER shall provide TOWNSHIP with three (3) copies of such report. The costs of any environmental assessment, compliance and reporting shall be included in the cost of the Demolition Work.

11. Reimbursement of Demolition Costs. The REDEVELOPER shall pay all costs for the Demolition Work, as more particularly described in Exhibit B (the "**Demolition Cost**"). If the total cost of demolition is expected to cost more than 5% over the amount set forth in Exhibit B, REDEVELOPER will notify TOWNSHIP prior to incurring the expense so that the TOWNSHIP can approve the cost. Pursuant to the Redevelopment Agreement between REDEVELOPER and TOWNSHIP that requires the TOWNSHIP to convey the Shopping Center Parcel to the REDEVELOPER, the Demolition Cost will be applied as a credit against the purchase price required for such lands under the Redevelopment Agreement.

12. Notices. Any demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by telecopy (with hard copy and a transmission confirmation sent by a recognized overnight national courier service (such as Federal Express) for next business day delivery) or by certified mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

If to the TOWNSHIP: **THE TOWNSHIP OF BERKELEY**
627 Pinewald Keswick Road
Bayville, New Jersey 08721
Attn: TOWNSHIP Clerk

with copy to: JOSEPH A. CLARK
DILWORTH PAXSON LLP
One River Centre, 331 Newman Springs Road
Building 1, Suite 136
Red Bank, NJ 07701

If to REDEVELOPER: BERKELEY REDEVELOPERS, LLC
1260 Stelton Road
Piscataway, New Jersey 08854
Attn: Jack Morris
Fax 732-985-5588
Ph. 732-985-1900

BERKELEY REDEVELOPERS, LLC
70 Grand Avenue, Suite 109
River Edge, NJ 07661 Attn: Joseph Marino
Fax 973-779-0493
Ph. 973-779-2100

BERKELEY REDEVELOPERS, LLC

c/o US Home
2465 Kuser Road
Hamilton, NJ 08690
Attn: Robert J. Calabro
Fax (609) 245-2230
Ph. (609) 245-2200, ext 161

with a copy to: Sheryl Weingarten, Esq.
Weingarten Law Firm, LLC
1260 Stelton Road
Piscataway, New Jersey 08854
Fax 732-985-5588
Ph. 732-985-1900

Lennar Corporation
700 N.W. 107th Avenue
Miami, Florida 33172
Attention: Corporate Counsel
Fax: (305) 229-6650
Phone: (305) 229-6584

Any notice delivered to a party's designated address by (a) personal delivery, (b) recognized overnight national courier service, (c) certified mail, return receipt requested, shall be deemed to have been received by such party at the time the notice is delivered to such party or (d) telecopy (with provision for assurance of receipt in a manner typical with respect to communications of that type). Confirmation by the courier delivering any notice given pursuant to this Section shall be conclusive evidence of receipt of such notice. Each party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. Any notice given by an attorney for a party shall be effective for all purposes.

13. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.

14. Agreement Not Assignable. REDEVELOPER shall not assign this Agreement or any interest therein.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision hereof shall be valid and be enforced to the fullest extent permitted by law.

16. Entire Agreement. This Agreement represents the entire agreement between the TOWNSHIP and Owner and supersedes all prior discussions, representations and agreements between the parties hereto. This Agreement may not be revised or amended except by a written instrument signed by the parties hereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all which when taken together shall constitute one and the same agreement. Facsimile and pdf signatures shall have the same effect as original signatures.

[balance of page intentionally left blank]

IN WITNESS WHEREOF, TOWNSHIP and REDEVELOPER have executed this Agreement as of the date set forth above.

REDEVELOPER:
BERKELEY REDEVELOPERS, LLC
By: LENNAR BERKELEY LLC, a New Jersey limited liability company, Member

By: ____________________

Name: Robert Calabro

Title: Manager

By: M&M at Berkeley LLC, a New Jersey limited liability company, Member

By: ____________________

Name: Jack Morris

Title: Manager

WITNESS:

Beverly M. Carle, TOWNSHIP Clerk

TOWNSHIP OF BERKELEY

By: ____________________
Carmen F. Amato, Jr., Mayor

Exhibit A

<u>Site Plan</u>

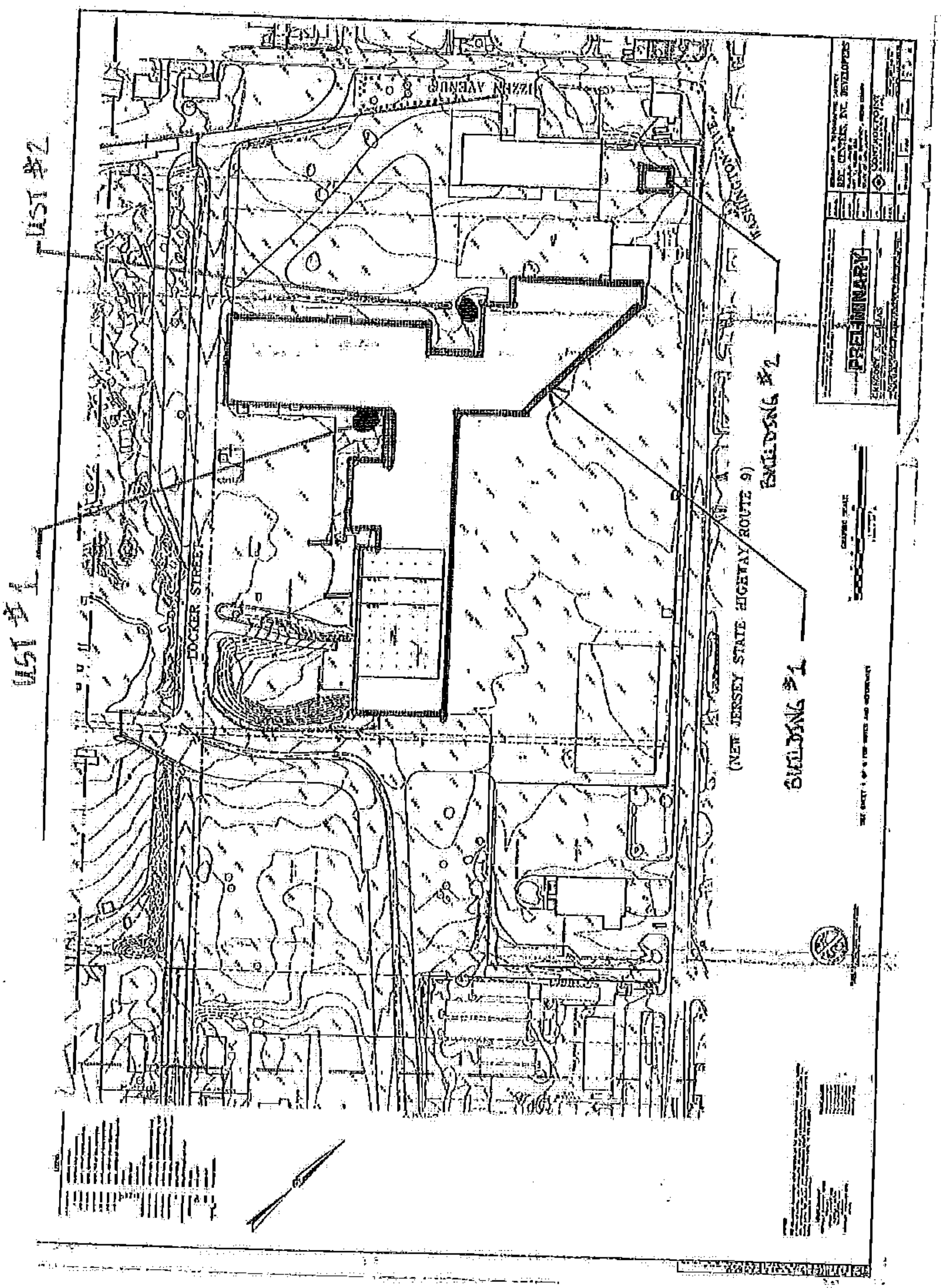
UST #2
UST #1
LOCKER STREET
(NEW JERSEY STATE HIGHWAY ROUTE 9)
BUILDING #2
BUILDING #1
PRELIMINARY

EXHIBIT A

Exhibit B

Demolition Scope of Work

(a) demolish Building 1 and 2 as depicted on Exhibit A, but leaving the slabs (excluding the basement area) and some of the parking lots to facilitate the demolition and crushing staging;

(b) remove any basement area slab, footing and foundations; backfill basement area with certified clean fill in one (1) foot lifts up to elevation of adjacent perimeter slabs. Each lift to be certified by soil engineer to no less than 95% compaction;

(c) obtain all required permits, licenses, approvals and inspections to perform the demolition in accordance with the requirements of the respective governmental authorities having jurisdiction thereof;

(d) obtain all necessary permits, insurance certificates, and other evidence of compliance with the requirements of the TOWNSHIP and the various agencies or departments having jurisdiction over the demolition;

(e) perform all necessary environmental and soil remediation in the demolition area, including asbestos and PCB caulk abatement;

(f) remove all materials and debris resulting from the demolition of Building 1 and 2 (excluding recycled materials that will be used for the redevelopment of the Property) and dispose of same in compliance with all applicable statutes, rules, and regulations;

(g) remove basement/loading dock roadways; backfill those areas with certified clean fill in one (1) foot lifts up to elevation of matching grades at building slab and surrounding areas in the immediate vicinity. Each lift to be certified by soil engineer to no less than 95% compaction;

(h) remove UST 1 and 2, as designated in Exhibit A; and

(i) crush all demolished brick, block and concrete to 2" minus material and stockpile the crushed material on slab next to Locker Street.

The cost to complete the foregoing scope of work is $1,170,700 for the non-environmental remediation work and the estimated cost of the environmental remediation of the Shopping Center Parcel is $497,800, plus third party supervision and reporting.

Additional Costs– disposal of material that does not meet NJDEP unrestricted use criteria (other than the PCB and asbestos containing materials and the USTs, all as described above)

Additional demolition scope of work terms are attached on page 2as Exhibit C.

Exhibit C

Additional Demolition Scope of Work

The following tasks will have to be performed to complete the demolition. The costs for the following tasks are not included in the cost provided on Exhibit B

1. Demo of garage
2. Demo of the adjacent occupied building on separate tax lot
3. Abatement and removal of any unknown contaminated materials
4. Soil (and, if applicable, groundwater) sampling
5. Abatement and removal of any unknown soils contamination from underground tanks
6. Removal & crushing of asphalt parking lot behind and to the north of shopping center
7. Spread and roll crushed concrete over soil in front parking lot to control soil erosion
8. Remove +/- 158,000 sf of concrete parking in front of shopping center from temporary fence line up to building
9. Crush concrete from parking lot to 2" minus
10. Temporary power (generator) rental
11. Rental/installation of temporary fencing to secure the site

The following tasks and costs have been completed and incurred to date, and are NOT included in the cost provided on Exhibit B

A.	Sewer and water disconnects:	$30,300
B.	Build water source for dust suppression during demolition:	$1,450
C.	Rental/installation of +/- 700 lf of temporary fencing with one gate: (installation, plus 4 month rental; $2,100 per month thereafter)	$11,320
D.	Environmental Consulting/Testing:	$7,000

Exhibit B

Project Schedule

EXHIBIT B
PROJECT SCHEDULE

The parties understand that due to the nature of construction projects, deadlines are subject to change for a variety of circumstances. The parties agree to cooperate on revising this schedule should events occur that delay or otherwise impact deadlines.

	TASK	COMPLETION DATE
	Execution of Redevelopment Agreement	October 2015
	Demolition (initial) of Shopping Center Parcel improvements	Commenced July 2015
	Condemnation of Block 824, Lot 1	October 2015
	Subdivision of Block 824, Lot 1 into Shopping Center Parcel and Asphalt Parcel	December 2015
	Conveyance of Shopping Center Parcel to Redeveloper	February 2016
	Concept Plan (Shopping Center Parcel) Submission by Redeveloper	March 2016
	Concept Plan (Shopping Center Parcel) Approval by Township	May 2016
	Site Plan (Shopping Center Parcel) Submission by Redeveloper	June 2016
	Site Plan (Shopping Center Parcel) Approval by Township	August 2016
	Submission of applications to third parties (county, NJDOT, NJDEP, etc.) for Shopping Center Parcel	September 2016
	PILOT Agreement (Shopping Center Parcel)	30 days following final third party approval
	Commencement of Construction (Shopping Center Parcel)	2 months following receipt of all approvals, and acceptable leases and financing
	General Scope of Work for PA/SI Environmental Investigation of Asphalt Parcel (Township)	December 2015
	PA/SI Environmental Investigation of Asphalt Parcel (Township)	TBD on an AOC-basis based upon the results of the General Scope of Work
	Environmental Remediation of Asphalt Parcel	TBD

9-28-15

Exhibit C

Subdivision Map

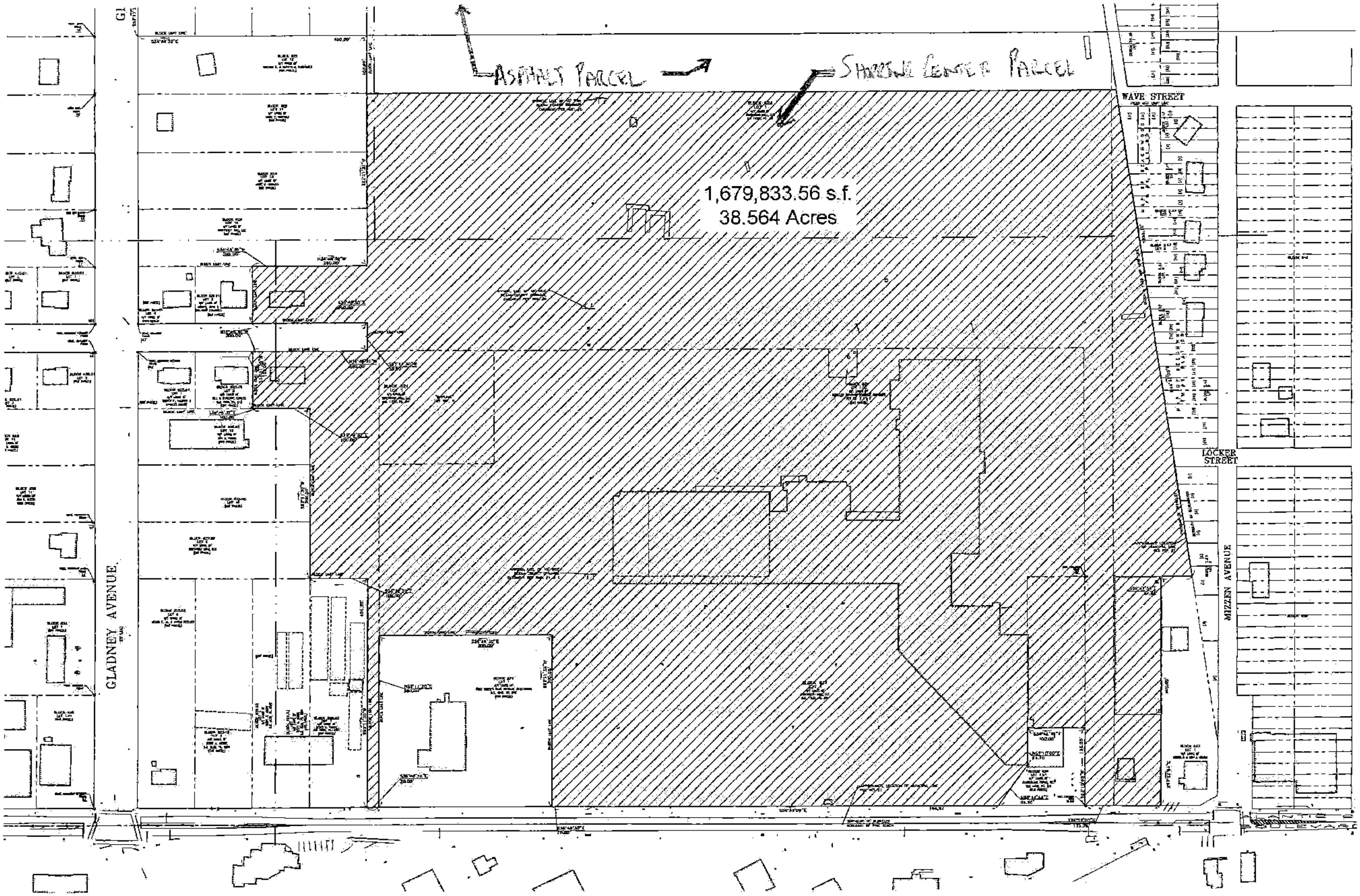
ASPHALT PARCEL
SHOPPING CENTER PARCEL
1,679,833.56 s.f.
38.564 Acres
WAVE STREET
LOCKER STREET
MIZZEN AVENUE
GLADNEY AVENUE

EXHIBIT C