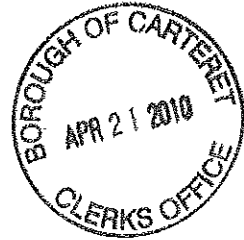


*Kinder Morgan*

*Kinder  
Morgan*

Record and Return to:

Matthew C. Karrenberg, Esq.  
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500 Frank W. Burr Boulevard  
Teaneck, New Jersey 07666



REDEVELOPMENT AGREEMENT

BY AND BETWEEN

BOROUGH OF CARTERET, NEW JERSEY,

as the Redevelopment Entity

and

KM CARTERET DEVELOPMENT, L.L.C.

as the Redeveloper

Dated as of March 11, 2010

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| Exhibit C | Memorandum of Agreement                     |
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**THIS REDEVELOPMENT AGREEMENT** (the "Redevelopment Agreement"), dated as of January \_\_, 2010, by and between **THE BOROUGH OF CARTERET**, a municipal corporation of the State of New Jersey with offices at Carteret Borough Hall, 61 Cooke Avenue, Carteret, New Jersey 07008, acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, as amended and supplemented (the "Redevelopment Law") and its respective successors and assigns (the "Borough"), and **KM CARTERET DEVELOPMENT, L.L.C.** a New Jersey limited liability company, and its successors and assigns (the "Redeveloper" and, together with the Borough, the "Parties").

**RECITALS:**

**WHEREAS**, on September 25, 2008, the Borough Council adopted Ordinance No. 08-34 approving and adopting the Kinder Morgan Redevelopment Plan (the "Redevelopment Plan", a true and correct copy of which is attached hereto as Exhibit A) in accordance with the Redevelopment Law); and

**WHEREAS**, the Redevelopment Plan relates to certain properties within the Borough, specifically Block 9.03, Lots 14.02, 17.03, 18.02 and 18.03 and Block 10, Lot 3.03, or such other Block and Lot designation on the tax map of the Borough reflecting the parcel immediately abutting, in the northwestern direction, both Lots 17.04 and 18.02 within Block 9.03 (collectively the "Redevelopment Area"); and

**WHEREAS**, on October 19, 2007, the Borough and Kinder Morgan Liquids Terminals, LLC, a limited liability company of the State, on behalf of and as the sole member of the Redeveloper (the "Company"), entered into that certain agreement (the "Pre-Development Agreement") with respect to, among others things, the Borough's costs, a true and correct copy of which is attached hereto as Exhibit B; and

**WHEREAS**, on July 28, 2009, the Borough and the Company entered into that certain Memorandum of Agreement, a copy of which is attached hereto as Exhibit C, which, among other things, sets forth a summary of all material financial terms related to the redevelopment of the Redevelopment Area; and

**WHEREAS**, In 2009, the Company created and established the Redeveloper in accordance with all applicable law and is the sole member and manager; and

**WHEREAS**, upon the execution of this Redevelopment Agreement, the Redeveloper intends to establish itself as an urban renewal entity in accordance with the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State of New Jersey (the "State"), and the acts amendatory thereof and supplemental thereto (the "Tax Exemption Law", as codified in N.J.S.A. 40A:20-1 et seq.); and

**WHEREAS**, on July 9, 2009, the Borough Council adopted resolution number 09-160, a true and correct copy of which is attached hereto as Exhibit D, authorizing the execution and delivery of this Redevelopment Agreement and designating the Redeveloper as the redeveloper

of the Redevelopment Area, subject to the execution and delivery of this Redevelopment Agreement by the Redeveloper;

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan, the Parties have determined to execute this Redevelopment Agreement; and

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

**SECTION 1.01. Definitions.** In this Redevelopment Agreement, unless a different meaning clearly appears from the context:

“Affiliate” means with respect to the Redeveloper, any other Person directly or through one or more intermediate entities controlling or controlled by, or under direct or through one or more intermediate entities control with the Redeveloper, including without limitation, the Company. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

“Agreement” means this Redevelopment Agreement, as the same may be amended or supplemented from time to time in accordance with its terms.

“Annual Service Charge” has the meaning ascribed to such term in the Tax Exemption Law.

“Applicable Law” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction. With regards to any ordinance, resolution, rule or regulation of the Borough, “Applicable Law” shall mean such ordinance, resolution, rule or regulation of the Borough that is either effective as of the date hereof or does not otherwise materially increase the obligations of the Redeveloper hereunder.

“Borough” means the Borough of Carteret, a political subdivision of the State of New Jersey, and its permitted successors and assigns.

"Borough Costs" is defined in Section 3.03 hereof.

"Borough Council" means the governing body of the Borough.

"Borough Event of Default" means, with respect to the Borough, an Event of Default, as such term is defined in Section 16.01 hereof.

"Borough Indemnified Parties" means the Borough and its officers, elected officials, agents, employees, contractors and consultants.

"Certificate of Completion" means a certificate or certificates certifying that the Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to the Project Improvements or certifying that the Project Improvements, or any portion thereof, have been Completed, provided however, to the extent that the Project Improvements, or any portion thereof, have been Substantially Completed, the Certificate to be provided shall certify that the Project Improvements, or any portion thereof, have been Substantially Completed.

"Certificate of Occupancy" means a permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project upon completion of all or a portion of the Project Improvements.

"Change in Law" means the enactment, promulgation, modification or repeal of or with respect to any Applicable Law subsequent to the Effective Date, which establishes requirements affecting performance by the Party relying thereon as a justification for its failure to perform any obligation under this Agreement.

"Claim" means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

"Commence[ment of] Construction" means the undertaking by Redeveloper of any actual physical construction of any Project Improvements.

"Commencement Default Date" means the respective date(s) by which physical construction of the Project Improvements, or any portion thereof, as the case may be, shall be commenced by the Redeveloper in accordance with the Project Schedule and Article XV hereof.

"Comple[t]e, [ed] or [ion]" means with respect to the Project Improvements, or any portion thereof, that (a) all work related to the Project Improvements, or a portion thereof, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Agreement and in compliance with Applicable Laws so that (i) the Project Improvements, or any portion thereof that have been Completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project Improvements, or any portion thereof that have been Completed, or such other work or action to which such

term is applied are in full force and effect, and (c) such "Completion" has been evidenced by a written notice provided by the Redeveloper (with respect to the Project Improvements, or any portion thereof), which determination is reasonably acceptable to the Borough.

"Completion Dates" are as set forth in the Project Schedule and Article XV hereof.

"Construction Period" means the period of time that commences on the Commencement of Construction date and ends on the Completion Date.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means the possession, directly or through one or more intermediate entities, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

"Effective Date" means the date on which this Agreement is executed, or such other date as may be agreed to by the Parties.

"Eminent Domain Act" means the law governing the acquisition of real property by the Borough, as codified at N.J.S.A. 20:3-1 et seq. as the same may be amended or supplemented from time to time.

"Environmental Law" or "Environmental Laws" means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, 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 including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. sect. 6901, et. seq.), the Clean Water Act (33 U.S.C. sect. 1251, et. seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11, et. seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6, et. seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et. seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et. seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et. seq.); and the rules and regulations promulgated thereunder.

"Estoppel Certificate" is defined in Section 5.12 hereof.

"Event of Default" means the occurrence of any Redeveloper Event of Default or Borough Event of Default, as the case may be.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Agreement as if set forth in full in the text hereof.

"Final Site Plan" is defined in Section 8.02 hereof.

"Financial Agreement" means the agreement substantially in the forms attached hereto as Exhibit E, respectively, as referred to in Section 3.08 hereof.

"Governmental Approvals" means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental entity, including without limitation the Borough and the Planning Board, required to be obtained in order to construct the Project Improvements.

"Governmental Authority" means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of government and any other governmental entity with authority over the Project or the Redevelopment Area, including without limitation, the Borough and the Planning Board.

"Hazardous Substance or Hazardous Materials" means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

"LNA" means a Letter of Non-applicability to be obtained by the Redeveloper, or its equivalent, which is a determination by NJDEP that Redeveloper has satisfied applicable Environmental Law with respect to the Redevelopment Area, or portion thereof, is not subject to certain Environmental Laws.

"Material Change" means, with respect to the Site Plan or Plans, any change in the Site Plan or Plans that would result in any material change (a) in the placement, footprint, square footage, height or holding capacity of any above ground bio-diesel, ethanol and/or petroleum storage and distribution facilities and any and all buildings or structures related thereto, (b) in the type of material to be used for the exterior of any above ground bio-diesel, ethanol and/or petroleum storage and distribution facilities, the bio-diesel production and warehouse facility, if applicable, and any and all buildings or structures related thereto, (c) in the color or exterior appearance of any above ground bio-diesel, ethanol and/or petroleum storage and distribution facilities, the bio-diesel production and warehouse facility, if applicable, and any and all buildings or structures related thereto, (d) in the type of material, or any other change that would alter the placement or appearance of any of the roads, roadways, driveways, parking areas (including the number of parking spaces), walkways, sidewalks, or exterior lighting and fixtures, (e) in the placement, grade, or point of connection or hook-up, for any site drainage, drainage outfalls, detention basins, water, storm or sewer service lines, (f) that would cause any of the utilities to be built or constructed at or above ground level or grade, and (g) that would otherwise alter the view or appearance of any of the Project Improvements from any and all of the surrounding properties.

"Memorandum of Agreement" has the meaning given in the Recitals.

"Minority" is defined in Section 5.06 hereof.

"Municipal Land Use Law" means N.J.S.A. 40:55D-1 et seq., as amended and supplemented.

"NFA" means a No Further Action Letter and Covenant Not to Sue, to be obtained by the Redeveloper, or its equivalent, which is NJDEP's Governmental Approval for the Remediation

determining (at a minimum), that the Redevelopment Area, or portion thereof, is suitable for development for such uses as are to be constructed as part of the Project.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successor agency to which its powers are transferred.

"Off-Site Infrastructure Improvements" means any improvements outside the Redevelopment Area, made necessary by the Vertical Improvements, On-Site Infrastructure Improvements, and/or Remediation, that are to be constructed and maintained by the Borough (on behalf of, and paid for by, the Redeveloper) and/or by the Redeveloper in order that the Redeveloper may satisfy the requirements of any applicable Governmental Approvals, including, without limitation, (a) all roadways, bridges and off-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the off-site infrastructure improvements, lighting within off-site parking areas, landscaping, fire hydrants and roadways, in each case, (c) water and sewer service lines for the Redevelopment Area, including hook-ups and service laterals for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project.

"On-Site Infrastructure Improvements" means any improvements within the Redevelopment Area, excepting the Vertical Improvements and Remediation, including, without limitation, (a) all roadways, bridges and on-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site parking areas, landscaping, fire hydrants and interior roadways, in each case, (c) water and sewer service lines for the Redevelopment Area, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project.

"Permitted Transfers" is defined in Section 12.05 hereof.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, urban renewal entity, institution, or any other entity.

"Plans" means those plans and specifications as set forth in Section 8.01 hereof.

"Planning Board" means the Planning Board of the Borough.

"Pre-Development Agreement" has the meaning given in the Recitals.

"Preliminary Site Plan" is defined in Section 8.01 hereof.

"Prevailing Wage Act" means N.J.S.A. 34:11-56.25 et seq., as amended and supplemented.

"Progress Meeting" is defined in Section 6.01 hereof.

"Progress Report" is defined in Section 6.02 hereof.

"Project" means the undertaking, design, permitting, financing, construction and completion of the Project Improvements, in, on, under, above, around and otherwise applicable and related to the Redevelopment Area.

"Project Costs" means all costs of the Project, including, without limitation, the design, permitting and construction of the Project Improvements, and the Borough Costs.

"Project Improvements" means, collectively, the Vertical Improvements, the Infrastructure Improvements, and the Remediation, provided however, that "Project Improvements" shall not be deemed to include any improvements to be undertaken by third-party utility providers (i.e. electric, water, cable, telephone, etc.), regardless as to whether the cost of such improvements is to be paid by the Redeveloper.

"Project Schedule" means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in Exhibit F attached hereto.

"Qualified Minority Business Enterprises" shall have the meaning ascribed to such term in Section 5.06 hereof.

"Redeveloper Covenants" shall have the meaning ascribed to such term in Section 9.04 hereof.

"Redeveloper Event of Default" means, with respect to the Redeveloper, an Event of Default as defined in Section 16.01 hereof.

"Redevelopment Area" has the meaning given in the Recitals.

"Redevelopment Law" has the meaning given in the Recitals.

"Redevelopment Plan" has the meaning given in the Recitals.

"Remediation" means the performance and completion of all investigations and cleanup, wetlands mitigation, and any and all other activities necessary or required for the cleanup or containment of all substances including, without limitation, Hazardous Substances, known or unknown, on, under or migrating to or from the Redevelopment Area, and the construction of the remedial systems, to the extent required by Applicable Law and Governmental Approvals, and to address any environmental contamination or condition or environmental damage to any natural resource including but not limited to air, groundwater, surface water or soil, required to implement the Redevelopment Plan in accordance with Environmental Laws.

"Scheduled Completion Date" means the scheduled date of issuance of a Certificate of Completion, as set forth in the Project Schedule and Article XV hereof.

"Section" means a section or subsection of this Agreement.

"Site Plan" means the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project Improvements required pursuant to the Borough's site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

"State" means the State of New Jersey.

"Substantial Completion" means that (a) the requirements set forth in clauses (a) through (c), inclusive, of the definition of "Completion" have been satisfied, with the exception of certain immaterial portions of the work relating to the Project Improvements that have been Completed, or such other work remains to be Completed as long as the Redeveloper, with respect to the Project Improvements, has prepared and delivered to the Borough a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Agreement, (b) "punch list" items have been reasonably agreed to by the Borough, and (c) such "punch list" items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further however, that all such "punch list" items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. "Substantial Completion" shall be evidenced by issuance of a Temporary Certificate of Occupancy for the Project Improvements, or any portion thereof that has been Substantially Completed.

"Temporary Certificate of Occupancy" means a temporary Certificate of Occupancy issued with respect to the Project Improvements, or a portion thereof upon Substantial Completion of the Project Improvements or such portion thereof.

"Term" means that period of time from the Effective Date of this Agreement until the Borough issues the final Certificate of Occupancy for the Project Improvements.

"Transfer" shall have the meaning ascribed to such term in Article XII hereof.

"Uncontrollable Circumstance" means the events or conditions set forth below, or any combination thereof, that has (have) had or may reasonably be expected to have a material adverse effect on the rights of the Parties to this Agreement or a Party's ability to perform its obligations or comply with the conditions set forth in this Agreement provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing obligation or complying with any condition required of such Party under the terms of this Agreement:

(a) An act of God, such as severe natural conditions such as landslide, lightning strike, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people strikes, lockouts or similar labor unrest, provided however,

that any question as to whether any such conditions should be deemed to constitute an Uncontrollable Circumstance shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe weather conditions (such as, but not limited to, seasonable temperature and precipitation), taking into account the geographic location and topographic and geotechnical conditions of the Redevelopment Area.

(b) "Change in Law".

(c) Action or inaction by any Governmental Authority which precludes or delays the Party relying thereon from performing its obligations under this Agreement, provided however, that (i) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, and/or (ii) decisions interpreting Federal, State and local tax laws that are generally applicable to all business taxpayers shall not constitute an Uncontrollable Circumstance under this paragraph (c).

(d) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon, and that 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.

(e) The intentional or unintentional damage or destruction of the Project Improvements or any portion thereof or of the Redevelopment Area by contractors, 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.

(f) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance or grant of any Governmental Approval, including, but not limited to, local Planning Board approval of the Redeveloper's Site Plans.

(g) Delay caused by or arising out of any strike, lock out or labor unrest, including the inability of any vendor, contractor or materials supplier to make timely delivery or materials of long-lead items due to strike, lock outs, labor unrest, national emergency or other delays in the industry.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (g) of this definition are intended to be the only acts, events or conditions which may (upon satisfaction of the criteria set forth above) constitute an Uncontrollable Circumstance.

"Utilities" means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

"Vertical Improvements" means the design, permitting, financing, construction and completion of seven (7) above ground bio-diesel, ethanol and/or petroleum storage and distribution facilities, including rail sidings and other related improvements, in the Redevelopment Area, provided however that no individual facility shall have a storage capacity

in excess of 165,000 barrels and in no event shall all of such facilities, in the aggregate, have a combined capacity in excess of 1,035,000 barrels.

**SECTION 1.02. Interpretation and Construction.** In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment Agreement, nor shall they affect its meaning, construction or effect.

(d) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(e) Each right of the Borough to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Borough official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Borough shall inform the Redeveloper of all officials with the required authority.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(g) Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

## **ARTICLE II**

### **DESCRIPTION OF REDEVELOPMENT AREA AND THE PROJECT IMPROVEMENTS**

**SECTION 2.01. Redevelopment Area.** The Redevelopment Area consists of the surface, subsurface and airspace above the real property described in the definition thereof and upon which the Project Improvements shall be constructed.

**SECTION 2.02. Proposed Development.** The Project consists of the design, permitting, financing, construction and completion of the construction of the Project Improvements. The Project shall be constructed consistent with the Redevelopment Plan, as it may be amended from time to time, this Agreement, the Site Plan, the Plans and all Applicable Laws.

**SECTION 2.03. Vertical Improvements.** The Vertical Improvements shall be utilized solely for the purpose set forth herein unless otherwise approved by the Borough, in the Borough's sole, but reasonable, discretion.

**SECTION 2.04. Infrastructure Improvements; Remediation.** Redeveloper shall provide for the timely implementation of the Infrastructure Improvements and Remediation in order to complete the Project. Redeveloper shall cooperate with the Borough in all respects to insure that the implementation of the Infrastructure Improvements and Remediation does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide all performance and maintenance bonds as required by the Governmental Approvals.

**SECTION 2.05. Project Schedule.** The Parties agree and acknowledge that adherence to the time set forth in the Project Schedule attached hereto as Exhibit F and Article XV hereof is of the essence of this Agreement. If Redeveloper fails to meet a completion date set forth in the Project Schedule or in Article XV hereof or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task; (b) Redeveloper's schedule for completing such task; and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion dates. This Section shall in no way limit the right of the Borough under Articles XV, XVI or other applicable provisions of this Agreement.

**SECTION 2.06. Industrial Highway Landscape Improvements.**

The Borough shall utilize a portion of the Redeveloper's Fee paid to the Borough in accordance with Section 3.06 hereof to undertake and construct certain landscape improvements along Industrial Highway in order to partially shield and screen the Project Improvements as the Borough, in its sole discretion, shall determine to be necessary, suitable or desirable.

### ARTICLE III

#### FINANCIAL OBLIGATIONS

**SECTION 3.01. The Redeveloper's Financial Commitment.** The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to implement and complete the Project.

**SECTION 3.02. Project Costs.**

(a) The Redeveloper represents that the total Project Cost is estimated to be \$35,488,000.

(b) The Redeveloper represents, covenants, warrants and agrees that all costs associated with the development and financing for the Project is the sole responsibility of the Redeveloper and all Project Costs shall be borne by the Redeveloper.

**SECTION 3.03. Borough Costs.** The Redeveloper agrees to provide funding to the Borough for all reasonable out-of-pocket costs incurred by the Borough in connection with the redevelopment of the Redevelopment Area (the "Borough Costs"), up to Fifty Thousand Dollars (\$50,000.00), which is in addition to any previous reimbursements for costs as provided under the Pre-Development Agreement. The Borough Costs shall include, but not be limited to, any fees and costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, engineers, technical consultants, planners and financial consultants, among others, and all out-of-pocket costs and expenses of the Borough.

**SECTION 3.04. Payment of Borough Costs.**

(a) The Redeveloper agrees that it will make timely payment or reimbursement to the Borough of the Borough Costs as set forth in Section 3.03 of this Agreement.

(b) On the Effective Date of this Agreement, the Pre-Development Agreement and the Memorandum of Agreement shall cease to be operative and effective and the terms and obligations contained therein shall be subsumed by the terms contained herein.

**SECTION 3.05. Governmental Approval Fees.** Subject to the limitation set forth in Section 3.09 hereof, the Redeveloper will pay all fees for permits required by the Borough (in accordance with standard fees provided in the Borough's ordinances) and any other Governmental Authority for the construction and development of the Project Improvements. Redeveloper shall pay all other permit fees, which include any permit fees payable by the Borough or Redeveloper to all required Governmental Authorities other than the Borough, or for which the Borough is required to reimburse other Governmental Authorities.

**SECTION 3.06. Redeveloper's Fee.** The Redeveloper shall pay to the Borough a redeveloper's fee in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00) upon receipt of the Final Site Plan approval from the Planning Board and the issuance of a building permit.

**SECTION 3.07. Impact Fees.** Payment of the Redeveloper's Fee in accordance with Section 3.06 hereof shall be deemed as payment of any impact fee that may have otherwise been due and payable in accordance with §160.46.4 of Code of the Borough or Borough Ordinance No. 07-05. Provided that the Redeveloper shall pay the Redeveloper's Fee in accordance with Section 3.06 hereof, no impact fee as set forth in §160.46.4 of Code of the Borough or in Borough Ordinance No. 07-05 shall otherwise be due.

### **SECTION 3.08. Tax Exemption.**

(a) Provided that the Redeveloper shall constitute an urban renewal entity in accordance with the Tax Exemption Law, the Borough shall grant a tax exemption to the Redeveloper for the Project, whereby the Redeveloper, in lieu of paying real property taxes on the Project Improvements, shall pay an Annual Service Charge, all in accordance with the terms of a Financial Agreement, substantially in the form attached hereto as Exhibit E, to be entered into by the Parties.

(b) Any Event of Default under this Redevelopment Agreement, or an event of default or breach of any other agreement by and between the Redeveloper and the Borough, shall constitute a breach and an event of default under the Financial Agreement. Upon such event the tax exemption granted therein shall immediately cease and shall have no further force and effect and the Project Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Borough.

**SECTION 3.09. Other Fees.** Other than as set forth in this Article III, the Redeveloper shall not be required to pay any Borough impact fees and that no other Borough fees shall be paid by the Redeveloper except standard statutory fees as required by law.

## **ARTICLE IV**

### **ENVIRONMENTAL MATTERS**

**SECTION 4.01. Environmental Compliance in General.** As between the Redeveloper and the Borough, the Redeveloper agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions, whether known or unknown, on, under or migrating to or from the Redevelopment Area or anything affected off-site, as may be required by applicable environmental laws and regulations, and the Redeveloper shall bear all costs for such investigation and remediation of the site. The Redeveloper also agrees that it shall use its best efforts to obtain all environmental approvals for the cleanup of the Redevelopment Area, including but not limited to LNA, or NFA and, to the extent required by Applicable Laws, covenants not to sue from the NJDEP with respect to any such environmental conditions and any remediation funding agreement that may be required by the NJDEP. Any environmental costs not paid by the present owners of the relevant properties will be the responsibility of the Redeveloper. The Borough agrees to assign to the Redeveloper its rights and claims for environmental recovery against third parties with respect to any obligation of the Redeveloper in favor of the Borough under this Article IV.

**SECTION 4.02. Redeveloper Indemnification of Borough.** Without limitation on any other obligation to defend and indemnify, and without limitation to such obligation which the Redeveloper may have as a matter of law, the Redeveloper shall indemnify, defend, release and hold the Borough and its officials and agents harmless against (a) all Claims or alleged Claims and response costs and fines and penalties against the Borough and its officials and

agents or the Redeveloper by any Governmental Authority or third party which concern the presence of Hazardous Materials which become present on or within the Redevelopment Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Redevelopment Area, whether prior to or after the Effective Date, (b) all Claims or alleged Claims against the Borough and its officials and agents by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials which become present on or within the Redevelopment Area or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Materials become present on or within the Redevelopment Area, whether prior to or after the Effective Date, and (c) all Claims or alleged Claims of bodily injury or property damage asserted against the Borough and its officials and agents by third Parties which are related to the presence of Hazardous Materials which become present on or within the Redevelopment Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Redevelopment Area whether prior to or after the Effective Date. This indemnity shall survive termination of this Redevelopment Agreement, unless the Redevelopment Agreement is terminated due to an uncured Event of Default by the Borough.

**SECTION 4.03. Industrial Site Recovery Act Compliance.** The Redeveloper shall prepare and submit all applications and documentation required to comply with the requirements of all Environmental Laws, including without limitation, the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA"). The Redeveloper shall use its reasonable efforts to obtain from the NJDEP an LNA, NFA, or other appropriate documentation evidencing compliance with ISRA. The Borough will not be responsible for any environmental costs associated with the failure to obtain ISRA clearance or an LNA or NFA.

**SECTION 4.04. Borough Cooperation and Environmental Reports.** Subject to the limitation on the reimbursement of the Borough's costs set forth in Section 3.03, the Parties acknowledge that the environmental investigation and remediation of the Redevelopment Area will be reviewed, approved and coordinated with the Borough's professionals and approved, as appropriate, by the NJDEP. The Redeveloper will provide to the Borough, and its professionals, any and all copies of environmental reports that it obtains or has possession of in connection with the Redevelopment Area.

**SECTION 4.05. Environmental Insurance.** In the event that the Redeveloper obtains, or is required by any Governmental Authority to obtain any environmental insurance policy, the Borough shall be named as an additional beneficiary on such policy with respect to the Redevelopment Area.

## ARTICLE V

### CONSTRUCTION OF PROJECT IMPROVEMENTS

**SECTION 5.01. Construction of Project Improvements.** The Redeveloper will construct or cause to be constructed the Project Improvements in accordance with the Project Schedule, Article XV hereof, the Site Plan, the Plans, this Redevelopment Agreement and all Applicable Law. The Redeveloper will design, permit and construct the Project Improvements, at the Redeveloper's sole cost and expense.

**SECTION 5.02. Relocation of Utilities.** The Redeveloper acknowledges that utility providers may have certain rights with respect to the Redevelopment Area and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefore, in order to complete construction of the Project Improvements, as provided by this Redevelopment Agreement. To the extent reasonably requested by the Redeveloper, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected utilities.

**SECTION 5.03. Prevailing Wages.** The Parties hereby acknowledge that the Prevailing Wage Act applies only to the extent this Agreement is deemed to constitute a Public Works contract and the construction of the Project Improvements is deemed to constitute a "Public Work," as defined in the Prevailing Wage Act. The Redeveloper shall determine whether the Prevailing Wage Act applies and, to the extent that the Prevailing Wage Act applies, the Redeveloper shall be responsible for costs associated therewith.

**SECTION 5.04. Reserved.**

**SECTION 5.05. Project Labor.** The Redeveloper agrees that it shall undertake and utilize union labor for those categories of work as set forth in Exhibit H attached hereto.

**SECTION 5.06. Affirmative Action.** During the construction of the Project Improvements, the Redeveloper covenants that it will use good faith efforts to comply with, and shall provide in its contracts with its contractors and subcontractors, the following:

(a) when hiring workers in each construction trade, or when engaging contractors, the Redeveloper agrees, pursuant to the Borough's request, to use its good faith efforts to employ: (i) Minority workers in each construction trade or (ii) Minority contractors consistent with the followings goals: (as to workers) -- a goal of employing fifteen (15%) percent Minority workers out of the total number of workers employed as part of the work force in connection with the Project Improvements; or (as to contractors) -- a goal of contracting with Qualified Minority Business Enterprises for fifteen (15%) of the dollar value of the hard costs of total procurements to be awarded in connection with the Project Improvements. For purposes of this section, the term "Minority" shall mean persons who are Female, African-American, Hispanic, Portuguese, Latino, Asian-American, American Indian or Alaskan natives. The term "Qualified Minority Business Enterprises" shall mean a business which has its principal place of business in New Jersey, is independently owned and operated, is at least 51% owned and controlled by

Minority group members and is qualified to carry out the work in a professional, workmenlike manner.

(b) it will undertake a program of local preference to facilitate entering into contracts with and/or purchasing goods and services from local merchants and businesses located within the Borough, including preferences for local retail and restaurant businesses, especially any local merchants and businesses which may be relocated within the Redevelopment Area, who operate uses which are permitted by the Redevelopment Plan and compatible with the Project Improvements as determined by the Redeveloper.

(c) it will endeavor to comply with the above stated goals by, among other things, considering employment of applicants, contractors and vendors who are from a pool registered by the Borough or its designee.

(d) where applicable it will at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, notwithstanding any other provision of this Redevelopment Agreement to the contrary, except in the case of a conflicting Applicable Law enacted or adopted by the Borough, the provisions of this Redevelopment Agreement shall prevail.

(e) The Redeveloper and its contractors and subcontractors shall submit reports regarding their compliance with this Section as the Borough may reasonably require.

(f) The Redeveloper covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Section.

**SECTION 5.07. Nondiscrimination During Construction; Equal Opportunity.** The Redeveloper for itself and its successors and assigns agrees that in the construction of the Project Improvements:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender. The Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed; national origin, ancestry, physical handicap, age, marital status, or gender. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender.

(c) The Redeveloper will cause the foregoing provisions to be inserted in all contracts for any work covered by this Redevelopment Agreement so that such provisions will be binding upon each contractor and subcontractor.

**SECTION 5.08. Maintenance of Redevelopment Area.** Following commencement of physical construction of the Project Improvements, the Redeveloper will maintain all areas of the Redevelopment Area including the buildings, parking areas, landscaping, streetscaping, sidewalks, including curbing and traffic calming devices, trash collection and receptacles, and all such issues identified in the Borough Property Maintenance Code, § 222.

**SECTION 5.09. Reserved.**

**SECTION 5.10. Traffic.** The Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Redevelopment Area is an issue to be addressed during the construction of the Project Improvements, as well as after its completion. The Redeveloper will exert reasonable efforts to minimize the traffic effects of the Project Improvements upon the surrounding neighborhoods.

**SECTION 5.11. Neighborhood Impacts.** The Redeveloper and the Borough acknowledge that the construction of the Project Improvements may have certain impacts on the neighborhoods in the vicinity of the Redevelopment Area and, in particular, adjacent redevelopment projects. Although it is anticipated that the Project Improvements will provide many positive effects on the community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and potentially for a short time thereafter. As such, the Redeveloper will make reasonable efforts to minimize any temporary inconveniences that arise provided that such minimization efforts are within the authority and ability of the Redeveloper.

**SECTION 5.12. Estoppel Certificates.** Within fourteen (14) days following written request therefore by a Party hereto, 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. In the event 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.

**SECTION 5.13. Cooperation.** The Parties shall fully cooperate with each other as necessary to effectuate the Project Improvements, including entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Borough's and the Redeveloper's respective obligations hereunder.

## ARTICLE VI

### PROJECT OVERSIGHT

**SECTION 6.01. Progress Meetings.** The Parties agree to attend and participate in quarterly progress meetings ("Progress Meetings") to report on the status of the Project Improvements and to review the progress under the Project Schedule. Progress Meetings may be held more frequently at the request of the Borough. The Borough shall give the Redeveloper seven (7) days advance written notice of any additional meetings. The Progress Meetings shall be held in the Borough Hall. Prior to the meeting, representatives of the Borough may visit the Redevelopment Area to inspect the progress of the work on the Project Improvements, however, the Borough acknowledges that the Redevelopment Area will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with such inspection.

The agenda for the Progress Meetings shall include, but not be limited to, a status report with regard to Governmental Approval submissions and approvals, construction of the Project Improvements, and compliance with the Site Plan, the Plans and the Redevelopment Plan. The Borough shall have the right at all reasonable times, at its cost and so as not to interfere with the operations conducted at the facility, to inspect the construction contracts and agreements, books and records pertinent to Project Improvements' construction contracts, leases, insurance policies, and such other agreements of the Redeveloper which are pertinent to the purposes of this Redevelopment Agreement and to the Progress Meetings in order to insure completion of the Project Improvements in accordance with the Project Schedule, Article XV hereof, the Redevelopment Plan, the Site Plan, the Plans, this Redevelopment Agreement and all Applicable Law.

**SECTION 6.02. Progress Reports.** The Redeveloper shall submit to the Borough a detailed quarterly written progress report ("Progress Report") (or more frequent Progress Reports, if reasonably requested by the Borough) which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed. The written progress report shall also contain the most current Estoppel Certificate.

**SECTION 6.03. Access to Property.** During the course of construction of the Project Improvements, the Borough and its authorized representatives shall have the right to enter the Redevelopment Area during regular business hours to inspect the Project Improvements and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement. In no event shall the Borough's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement. The Borough acknowledges hereby that the Redevelopment Area will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with any such inspection.

**SECTION 6.04. Submissions and Presentations to the Borough.** Except as may otherwise be set forth in this Redevelopment Agreement, the Redeveloper shall be required to provide the Borough with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities.

## **ARTICLE VII**

### **GENERAL DEVELOPMENT REQUIREMENTS**

**SECTION 7.01. Scope of Undertaking.** The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project Improvements, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project Improvements, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project Improvements and all aspects of the funding of the Project Improvements, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

**SECTION 7.02. Standards of Construction.** Without limitation, all work on the Project Improvements shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals, Site Plan and Plans being of such quality as is required by such Governmental Approvals, Site Plan and Plans and as are appropriate for a project of the character and quality of the Project Improvements. All construction shall be in accordance with the Uniform Construction Code, codified at N.J.A.C. 52:3-1 et seq., Class 1A or Class 1B, as appropriate, based on height and area, unless another class is specifically approved in writing by the Borough upon request of the Redeveloper.

**SECTION 7.03. Compliance With Applicable Law.** The Project Improvements and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Laws.

**SECTION 7.04. Payment of Project Costs.** The Redeveloper shall pay (or cause to be paid) when due, all costs and expenses, including, without limitation, all contractors' requisitions and the cost of materials and equipment incurred in connection with work on the Project Improvements and all fees and expenses of any consultants and professionals and like providers acting for (or on behalf of) the Redeveloper.

**SECTION 7.05. Liens.** The Redeveloper shall indemnify and hold the Borough harmless from all liens, or claims or rights to enforce liens, against the Redevelopment Area, or the improvements arising out of any activities or work performed by (or on behalf of) the

Redeveloper or labor or materials furnished to the Redeveloper under this Redevelopment Agreement. Without limitation, in all events, not less than ten (10) days prior to the date on which the Redeveloper might be divested of any interest in the Redevelopment Area as a result of any such lien, the Redeveloper shall cause any such lien to be lifted and removed, by bonding or other action and shall provide the Borough a current endorsement of the applicable title insurance policy or policies reflecting that title is free and clear of such lien.

## ARTICLE VIII

### APPLICATIONS FOR GOVERNMENTAL APPROVALS

#### SECTION 8.01. Site Plan Approval.

(a) The Redeveloper, shall at its own cost and expense cause to be prepared by a licensed architect, surveyor and/or engineer of the State and submitted to the Borough, a Preliminary Site Plan and if necessary a Subdivision Plan (hereinafter collectively referred to as the Preliminary Site Plan) for the construction of the Project, by the dates set forth in the applicable Project Schedule and Article XV hereof. To the extent not shown on the Preliminary Site Plan, the Redeveloper shall also submit the following plans and specifications (hereinafter referred to as the "Plans") to the Borough for its review and acceptance:

(i) A plan showing (A) each of the above ground bio-diesel, ethanol and/or petroleum storage and distribution facilities and any and all other buildings or structures related thereto, including without limitation all elevations and exterior treatments, including color, type and texture of materials to be used and (B) the site and site improvements.

(ii) An infrastructure plan showing the placement or appearance of any of the roads, roadways, driveways, parking areas (including the number of parking spaces), walkways, sidewalks and fixtures, the grade, or point of connection or hook-up, for any site drainage, drainage outfalls, detention basins, water, storm or sewer service lines, or other utilities.

(iii) A lighting plan demonstrating that all "on site" walkways, parking areas, and other areas accessible to pedestrians during the hours of darkness will be adequately lighted to insure pedestrian safety. Such plan will demonstrate the amount, placement, type and construction of the lighting.

(iv) A plan estimating the timing of any soil or environmental remediation and/or engineering and institutional controls of final site preparations, foundations, construction, landscaping, installation of drives, sidewalks, and completion of construction, and any information and data necessary to enable the Borough to schedule any public improvements required.

(b) The Redeveloper shall not submit a Preliminary Site Plan to the Planning Board without prior written approval issued by the Borough of the Preliminary Site Plan and the Plans, which shall not be unreasonably denied and so long as the Borough follows the terms and conditions of the following paragraph.

(c) If the Borough determines that the Preliminary Site Plan, or the Plans, are unacceptable for any reason, in its sole discretion, or if planning or engineering concerns raised by the Redeveloper dictate that revisions be made to the Preliminary Site Plan, or the Plans, before submission of the same to the Planning Board, the revised Preliminary Site Plan or Plans shall be submitted to the Borough, which shall have a period of thirty (30) days after receipt thereof to approve the revised Preliminary Site Plan or Plans or to furnish to the Redeveloper in writing notice of any changes or of any modifications required to be made along with the reason(s) therefore. Upon reasonable request of the Borough, the Redeveloper shall consent to an additional thirty (30) day period to review the Preliminary Site Plan and Plans, or any revisions thereof. If changes or modifications shall be required by the Borough, the Redeveloper shall incorporate such changes and modifications and furnish the revisions to the Borough for approval within sixty (60) days after receipt of written notice thereof. The Redeveloper agrees that no Governmental Application(s) for Preliminary Site Plan Approval or subdivision approval shall be filed with any Governmental Authority without the prior written approval of the Borough as long as the Borough complies with the time frames herein and does not unreasonably refuse to grant its written approval. In the event that the Borough shall fail to notify the Redeveloper within forty-five (45) days of its receipt of the revised Preliminary Site Plan and Plans, or revisions thereof, of any proposed objections and/or modifications requested by the Borough to the revisions, then the Borough shall be deemed to have accepted such revised Preliminary Site Plan and Plans. In performing its review of the Preliminary Site Plan and Plans, or revisions thereof, the Borough shall not unreasonably withhold its approval of same, nor shall it unreasonably withhold its consent to the Redeveloper's request for additional time to submit any revisions to its Preliminary Site Plan or Plans.

(d) Within thirty (30) days of Borough approval in writing of any Preliminary Site Plan or Plans, or any revision thereof, the Redeveloper shall prepare and submit same to the Planning Board and shall file the required Governmental Application(s) complete with any supporting documents as shall be required to obtain approval of the Preliminary Site Plan or revised Preliminary Site Plan and if necessary, the subdivision plan in accordance with ordinances of the Borough and the Municipal Land Use Law, N.J.S.A. 40:55D - 1 et seq. Redeveloper shall provide the Borough with a copy of the Preliminary Site Plan, or application, and the Plans at such time as such application is submitted to the Planning Board.

(e) Prior to its submission of the Preliminary Site Plan application or Plans to the Planning Board, the Redeveloper shall provide to the Borough the most current Estoppel Certificate along with a certification that the Preliminary Site Plan and Plans are in compliance and conformity with this Redevelopment Agreement and the Redevelopment Plan.

#### **SECTION 8.02. Final Site Plan Application.**

(a) At least seven (7) days prior to the submission of any Final Site Plan application to the Planning Board, the Redeveloper shall make, for informational purposes only, a

presentation to the Borough Council of such application and receive comments from the Borough Council thereon. Redeveloper shall provide copies of all Site Plan applications and the Plans to the Council at least seven (7) days before its presentation. The presentation to the Borough Council shall not constitute an application for development approvals and any action taken by the Borough Council upon the Redeveloper's presentation shall not constitute any determination to award or deny development approvals. In addition, the Redeveloper shall provide the Borough with a copy of the Final Site Plan or application at such time as such application is submitted to the Planning Board.

(b) Prior to its submission of the Final Site Plan application or Plans to the Planning Board, the Redeveloper shall provide to the Borough the most current Estoppel Certificate along with a certification that the Final Site Plan and Plans are in compliance and conformity with this Redevelopment Agreement and the Redevelopment Plan.

#### **SECTION 8.03. Change in Plans.**

(a) If at any time there shall be any Material Change in the Site Plan or Plans, for any reason whatsoever, including without limitation, any Material Change as may be requested or desired by the Redeveloper, or otherwise required by any Governmental Authority, other than the Borough, its Council, or any agent or official of the Borough, or any contractor or sub-contractor, any such Material Change in the Site Plan or Plans shall be subject to the approval of the Borough, in the Borough's sole, but reasonable, discretion. The Borough shall have thirty (30) days to approve or disapprove of any such Material Change in the Site Plan or Plans, otherwise such Material Change shall automatically be deemed approved by the Borough.

(b) In the event that the Redeveloper shall modify, amend, alter or otherwise change the Site Plan or Plans, and such modification, amendment, alteration or other change, in the good faith determination of the Redeveloper, shall not constitute a Material Change in accordance with Section 8.03(a) hereof, the Redeveloper shall submit such modified, amended, altered or changed Site Plan and Plans to the Borough. Nothing contained herein shall alter or limit the Borough's ability to challenge such modified, amended, altered or changed Site Plan or Plans as being Material Changes.

**SECTION 8.04. Effect of Review of Plans.** The review by the Borough of the Site Plans and Plans shall not constitute a representation, warranty or guaranty by the Borough as to the substance or quality of the documents, work or other matter reviewed, approved or accepted. The Borough makes no representation or warranty, expressed, implied or otherwise, as to the fitness of the Project Improvements or the Redevelopment Area for use for any particular purpose, condition or durability thereof, or that it will be suitable for the Redeveloper's purposes. At all times, however, the Redeveloper shall use its judgment as to the accuracy and quality of all such documents, work and other matters. THE BOROUGH DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY.

**SECTION 8.05. Submission of Construction Plans.** Within ninety (90) days of receiving Final Site Plan approval from the Planning Board, the Redeveloper shall, at its own

cost, cause to be prepared and submitted to the Construction Official of the Borough of Carteret construction plans for the Project, which shall be in compliance with the Site Plan and Plans, in a form sufficient for the Construction Official to issue a building permit or other permit necessary to Commence Construction.

**SECTION 8.06. Borough Cooperation.** To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Borough shall provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Borough board, body or department, including the Planning Board, as applicable. To the extent permitted by Applicable Law, and upon the reasonable request of the Redeveloper, the Borough shall use its best efforts to (a) cause the Planning Board to begin consideration of any application submitted by the Redeveloper within thirty (30) days following the Planning Board's determination that such application is administratively and technically complete, (b) cause the Planning Board to complete the Planning Board's hearings with respect to such applications within sixty (60) days of determination of completeness or as expeditiously as practicable in light of the scope and nature of questions/comments of the Planning Board and members of the public with respect to such applications, and, if necessary in the Borough's sole discretion, to (c) cause the Planning Board to convene special meetings as frequently as is required (consistent with the requirements of Applicable Law) in order to complete such hearings.

## ARTICLE IX

### REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

**SECTION 9.01. Representations and Warranties by the Redeveloper.** In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof (such representations and warranties to survive the termination or expiration of the Term of this Agreement):

(a) The Redeveloper is a limited liability company organized under the laws of the State, is qualified as an urban renewal entity in accordance with the Tax Exemption Law, is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Company is the sole member of the Redeveloper.

(c) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the

Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(d) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(e) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

(f) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper shall have been filed.

(g) No indictment has been returned against any partner, member or officer of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(h) There is no pending or, to the best of the Redeveloper's knowledge, threatened litigation that would reasonably be expected to prevent the Redeveloper from performing its duties and obligations hereunder.

(i) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(j) All materials and documentation submitted by the Redeveloper and its agents to the Borough and its agents were, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Borough of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(k) the Company and the Redeveloper have entered into a ground lease whereby the Redeveloper has a leasehold interest in the Redevelopment Area.

(l) The Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project Improvements.

(m) The Redeveloper agrees that the cost and financing of the Project is the responsibility of the Redeveloper. The Borough shall not be responsible for any cost whatsoever in respect to same.

(n) The ownership structure of the Redeveloper and the Company is set forth in Exhibit G attached hereto. The Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by a partner, member or officer of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper, including without limitation, the Company, and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest.

(o) Neither the Borough nor any of its agents, representatives, employees or officers have made any representations or warranties, expressed or implied, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Redeveloper has not relied on any representations or warranties (except those representations, if any, expressly set forth in this Agreement, the Financial Agreement and the Memorandum of Agreement) as to (i) the current or future real estate tax liability, assessment or valuation of any of its property, including without limitation, the Redevelopment Area or the Project Improvements; (ii) the potential qualification of any of its property, including without limitation, the Redevelopment Area or the Project Improvements for any and all benefits conferred by federal, state or municipal laws; (iii) the compliance of any of its property, including without limitation, the Redevelopment Area or the Project Improvements in its current or future state, with applicable zoning ordinances and the ability to obtain a variance in respect of any such property's non-compliance, if any, with said zoning ordinances; (iv) the current or future use of any of its property, including without limitation, the Redevelopment Area or the Project Improvements, including but not limited to the use of any such property for any commercial or residential purpose; (v) the physical condition, including, but not limited to, the environmental condition, of any of its property, including without limitation, the Redevelopment Area or the Project Improvements; and (vi) the ability to obtain federal, state, county or municipal approvals for construction or alteration of any improvement on any of its property, including without limitation, the Redevelopment Area or the Project Improvements.

(p) The Redeveloper has (i) reviewed the Code of the Borough, (ii) been given adequate opportunity to request of and from the Borough any further information or clarification of any and all of the provisions of the Code of the Borough, and (iii) to the extent requested, received from the Borough any such information or clarification to its satisfaction.

(q) The Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction(s) contemplated by this Agreement solely in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk. Redeveloper acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same.

#### **SECTION 9.02. Reserved.**

#### **SECTION 9.03. Mutual Representations.**

(a) The Borough and the Redeveloper agree that the Project shall be governed by this Redevelopment Agreement.

(b) In the event that any contractual provisions that are required by the Applicable Law have been omitted, then the Borough and the Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the parties, the Borough and the Redeveloper agree to mitigate such changes in position such that the burdens and costs of the Redeveloper with respect to the Project shall not materially increase.

**SECTION 9.04. Redeveloper Covenants.** In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Redevelopment Agreement, the Redeveloper hereby covenants and agrees to the following for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, "Redeveloper Covenants"):

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws. The Redeveloper shall provide evidence reasonably satisfactory to the Borough that the Project Improvements are in compliance with all applicable State and Federal environmental statutes and regulations.

(b) The Redeveloper shall (i) obtain financing of the Project and (ii) shall begin and Complete construction of each item in the Project Schedule and Article XV hereof whenever applicable, on or prior to the applicable date set forth therein (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period unless otherwise provided in this Agreement).

(c) The Redeveloper shall construct the Project Improvements in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, the Site Plan, the Plans and all other Applicable Law and, in the event that the Redeveloper wishes to change or modify the Project Improvements, notwithstanding the fact that such change or modification is authorized by the Redevelopment Plan, such changes or modifications must, in all circumstances, comply with Section 8.03 hereof. The Redeveloper acknowledges that the Borough has relied on the proposed Project Schedule and Article XV hereof, along with its rights to review and approve of the Site Plan and the Plans, in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein).

(e) The Redeveloper shall immediately notify the Borough of any material change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project

Improvements in furtherance of the Borough's consideration in designating the Redeveloper as the redeveloper of the Redevelopment Area.

(f) The Redeveloper shall not use the Redevelopment Area, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

(g) The Redeveloper shall prepare and timely file all municipal tax returns required to be filed by it, if any, and shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Redevelopment Area and/or the Project Improvements, or any other of its property located within the Borough, before the same shall become in default, however, this provision is without prejudice to the Redeveloper's right to file tax appeals if it believes that the taxes or assessments are excessive.

(h) Any agreement or instrument conveying an interest in any or all of the Redevelopment Area shall be subject to all of the rights and remedies granted to the Borough under this Redevelopment Agreement.

(i) In consideration for the rights, benefits and protections afforded the Redeveloper pursuant to this Agreement, including without limitation, the forbearance by the Borough of its right to exercise its power of condemnation in accordance with, and as set forth in, Section 9.05 hereof, the Redeveloper hereby expressly, knowingly, voluntarily and irrevocably waives and relinquishes, to the fullest extent permitted by law, any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, assert, pursue, institute, enforce, bring suit or any other legal action, or cause of action, dispute, contest, object, appeal or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, suits, actions or cause of action, at law, in equity, or otherwise, in any court, tribunal or administrative hearing, or otherwise, including without limitation, any condemnation proceeding, or before any Governmental Authority, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the Borough that the Redevelopment Area is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, (ii) any and all actions, inactions, determinations, decisions, conclusions or findings, official or otherwise, of the Borough or any of the Borough's instrumentalities, authorities, agencies, boards, bodies or departments, including without limitation, the Planning Board, with regards to the Redevelopment Area, Redevelopment Plan, the redevelopment process, or otherwise, or (iii) the constitutionality, legal authority, preemption or precedent, in accordance with Federal, State or any other law, or otherwise, of the Redevelopment Law or the Eminent Domain Act, including any provision contained therein, and its application, by the Borough or any of the Borough's instrumentalities, authorities, agencies, boards, bodies or departments, including without limitation, the Planning Board, or otherwise, to the Redevelopment Area, Redevelopment Plan, the redevelopment process, or otherwise. Notwithstanding anything herein to the contrary, Redeveloper's waiver is conditioned upon the Redevelopment Agreement and the Financial Agreement remaining in full force and effect, and if the Redevelopment Agreement or the Financial Agreement is terminated for whatever reason, this waiver is deemed withdrawn.

#### **SECTION 9.05. Borough Covenants.**

In addition to, but not limited by, any and all other covenants and agreements of the Borough contained in this Agreement, the Borough hereby covenants and agrees to the following for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, the "Borough Covenants"):

(a) Provided that (i) there shall not exist a Redeveloper Event of Default, (ii) this Agreement has not otherwise been terminated, and (iii) the Redeveloper is not in default of any other agreement it has entered into with the Borough, including without limitation, the Financial Agreement, the Borough shall forbear from seeking to acquire or obtain title to the Redevelopment Area through the exercise of the Borough's power of condemnation in accordance with the Redevelopment Law and the Eminent Domain Act, provided however, that in the event any of the events or circumstances set forth in (i), (ii) or (iii) above shall occur, such forbearance by the Borough shall immediately cease and shall have no further force and effect and the Borough shall be entitled, for all purposes of this Agreement and at law, to acquire or obtain title to the Redevelopment Area through the exercise of the Borough's power of condemnation in accordance with the Redevelopment Law and the Eminent Domain Act.

(b) Upon the Completion of the Project Improvements in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project Improvements.

**SECTION 9.06. Recording, Project Covenant.** Upon the execution of this Agreement, this Agreement, or a memorandum summarizing the provisions satisfactory to both parties, shall be filed and recorded with the Middlesex County Clerk, at the Redeveloper's expense, such that this Agreement shall be reflected upon the land records of the County of Middlesex as a project covenant running with the Redevelopment Area, including any Project Improvements related thereto.

**SECTION 9.07. Effect and Duration of the Covenants.** Except as otherwise set forth herein, it is intended and agreed that the agreements and covenants set forth in this Article IX and those elsewhere in this Redevelopment Agreement shall be covenants running with the Redevelopment Area until the Project Improvements shall be Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project Improvements, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Improvements, or any part thereof. It is further intended and agreed that the agreements and covenants herein that expressly state shall survive termination of this Redevelopment Agreement, including without limitation, Sections 4.02, 9.01, 9.04(a), (f), (g), (h) and (i), 13.01 and Article XVI hereof, shall be covenants running with the Redevelopment Area and shall remain in effect without limitation as to time.

**SECTION 9.08. Enforcement of Covenants by the Borough.** In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including all other rights as more specifically set forth in Article XV. This Section is not intended to confer standing to sue on any party other than the Borough.

## ARTICLE X

### OMITTED

## ARTICLE XI

### CERTIFICATES OF OCCUPANCY AND COMPLETION

**SECTION 11.01. Certificate of Occupancy.** Upon completion of the construction of any above ground bio-diesel, ethanol and/or petroleum storage and distribution facility and any and all other buildings or structures related thereto that are included as part of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy or such other final approval as may be required for such bio-diesel, ethanol and/or petroleum storage and distribution facility and any and all other buildings or structures related thereto. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy, or such other final approval as may be required, and the Borough shall promptly process any applications for same. Upon satisfaction of the requirements set forth in the definition of "Substantial Completion," the Redeveloper may apply to the appropriate governmental officer or body for issuance of a Temporary Certificate of Occupancy, or such other temporary approval as may be required, which shall be effective until such time as a permanent Certificate of Occupancy, or such other final approval as may be required, is received. Notwithstanding the issuance of the Temporary Certificate of Occupancy, or such other temporary approval, the Redeveloper shall not be deemed to have completed the Project Improvements, or portion thereof, as applicable, until the permanent Certificate of Occupancy, or such other final approval as may be required, is issued. As such, until such permanent

Certificate is issued, the provisions of this Redevelopment Agreement remain in full force and effect.

**SECTION 11.02. Certificate of Completion.** The completion of the Project Improvements shall be evidenced by a certificate of the Borough in recordable form ("Certificate of Completion") accepting the terms of a certificate of the Redeveloper stating that: (a) the Project Improvements have been Completed (excluding any normal and customary tenant improvements) in accordance with the Site Plan and Plans and all labor, services, materials and supplies used in connection therewith have been paid for or adequate security has been posted in connection therewith; (b) other facilities necessary to achieve substantial Completion and commence occupancy of a particular portion of the Project Improvements has been acquired, constructed or improved in accordance with the Site Plan and Plans and all costs and expenses incurred in connection therewith have been paid or adequate security otherwise posted; and (c) a Certificate of Occupancy, if required, and any other permissions required, if any, of governmental authorities or agencies for the occupancy and use of all portions of the Project Improvements for the purposes contemplated by this Redevelopment Agreement have been obtained. The Borough shall not unreasonably withhold or delay the delivery of a Certificate of Completion. If the Borough determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion. If the reason for the refusal is confined to the immediate availability of specific minor finish items, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing 125% of the value of the work not yet completed.

## ARTICLE XII

### TRANSFERS

**SECTION 12.01. Prohibition Against Speculative Development.** The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Redevelopment Area and not for speculation in land holding.

**SECTION 12.02. Prohibition Against Transfers.** Subject to Section 12.05 hereof, the Redeveloper recognizes that, in view of (a) the importance of the redevelopment to the general welfare of the community; and if applicable, (b) the public assistance to be made available by law and by the Borough on the conditions stated herein, for the purpose of making such redevelopment possible; no voluntary or involuntary Transfer of the Redeveloper, the

Redevelopment Area or the Project Improvements shall occur or be permitted as except as expressly set forth in this Agreement or otherwise required by Applicable Law.

**SECTION 12.03. Transfer of Interest in Redeveloper.** Subject to Section 12.05 hereof, in the event that there shall be a Transfer of the ownership of the Redeveloper, such Transfer shall not be deemed an Event of Default provided that the transferee shall, by instrument in writing reasonably acceptable to the Borough, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed all of the relevant obligations of the Redeveloper under this Agreement and agreed to be subject to all the relevant conditions and restrictions to which the Redeveloper is subject. Notwithstanding the foregoing, Transfer of the Redevelopment Area is expressly permitted after the issuance of a Certificate of Completion for the Redevelopment Area, or applicable portion thereof.

**SECTION 12.04. Transfers of Redevelopment Area or Project Improvements Prior to Issuance of Certificate of Completion.**

(a) In the event that there shall be a Transfer of the title to the Redevelopment Area or the Project Improvements prior to the Certificate of Completion, such Transfer shall not be deemed an Event of Default provided that the proposed transferee satisfies the following conditions, as reasonably determined by the Borough:

(i) the proposed transferee shall own and occupy the Redevelopment Area or the Project Improvements being transferred to it at least until the final Certificate of Completion for the Project Improvements is issued, and shall represent same in writing to the Borough.

(ii) the proposed transferee shall have qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken in this Agreement with respect to the Project Improvements by the Redeveloper and other obligations pursuant to Governmental Approvals (including, but not limited to, maintenance of remedial systems); or any part of such obligations that may pertain to the transferred interest or the transferred portion of the Redevelopment Area and the Project Improvements, as determined from:

(1) Audited financial statements indicating (i) net worth or (ii) unencumbered lines of credit; or evidence of loan commitments sufficient to carry out the Project Improvements by the transferee or assignee; and

(2) Submission of letters of recommendation from reputable parties for whom the prospective transferee has undertaken a comparable development, stating that the proposed transferee or assignee possesses the competence and integrity to undertake the Project Improvements.

(iii) Any proposed transferee, by instrument in writing reasonably acceptable to the Borough, shall, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed all of the relevant obligations of the

Redeveloper under this Agreement and agreed to be subject to all the relevant conditions and restrictions to which the Redeveloper is subject.

(iv) The Redeveloper and its transferees shall comply with such other reasonable conditions as the Borough may find necessary in order to achieve and safeguard the purposes of this Agreement, the Plans and the Redevelopment Plan.

(b) The transfer rights granted pursuant to this Section 12.04 are personal to the Redeveloper and will not run to any transferee so long as this Agreement is in effect. In no event will the Redeveloper be permitted to carry out more than one (1) transfer pursuant to this Section 12.04.

(c) Any transfer of the Redevelopment Area or Project Improvements in violation of this Section 12.04 shall be null and void *ab initio*. Such default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Borough, no such sale, transfer, conveyance or assignment or approval thereof by the Borough, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. In the event of any attempted transfer in violation of this Section 12.04, the Borough shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Upon the recording of this Agreement in the Office of the Middlesex County Register, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

(d) Notwithstanding anything to the contrary set forth herein, there shall be no prohibition on any Transfer of the Redevelopment Area or Project Improvements after a Certificate of Completion has been issued for the Redevelopment Area or Project Improvements.

#### **SECTION 12.05. Permitted Transfers.**

(a) The Redeveloper, without violating the provisions of Section 12.02, Section 12.03 or Section 12.04 hereof, may effect the following Transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough, except as may be required pursuant to Section 12.05 hereof ("Permitted Transfers"):

(i) security for, and only for, the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project Improvements and any other purpose authorized by this Redevelopment Agreement;

(ii) a mortgage or mortgages and other liens and encumbrances (including mechanic's liens) for the purposes of financing costs associated with the development and construction of the Project Improvements;

(iii) utility and other development easements;

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

(v) transfers among partners of the Redeveloper and/or trustees for their benefit;

(vi) any contract or agreement with respect to any of the foregoing exceptions;

(vii) a lease of the Redevelopment Area, Project Improvements or the conveyance of the right to store liquids in the Vertical Improvements in the ordinary course of the Redeveloper's business, provided however, that there shall be no transfer of the Redevelopment Agreement, the Project or the Project Improvements to a lessee until a Certificate of Completion has been issued by the Borough.

(viii) transfers among Affiliates of Redeveloper;

(ix) transfers to any successor entity which purchases all of the assets, stock or interests of Redeveloper (and/or Redeveloper's parent corporation and/or Affiliates);

(x) transfers resulting from the merger, consolidation or reorganization of Redeveloper (and/or Redeveloper's parent corporation and/or Affiliates) with any other entity.

#### **SECTION 12.06. Notice of Permitted Transfers.**

(a) With respect to any Permitted Transfers as set forth in Section 12.05(a)(i)-(vi) hereof, the Redeveloper shall provide to the Borough written notice at least thirty (30) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. No such Permitted Transfer set forth in Section 12.05(a)(i)-(vi) hereof shall become effective until the Borough has reviewed the supporting documentation provided by the Redeveloper and approved such supporting documentation, which approval shall not be unreasonably denied. In the event of a Permitted Transfer in accordance with Section 12.05(a)(v) hereof, the Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement (if the Redeveloper's right, title and interest in the Project Improvements is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project Improvements is being transferred). The Redeveloper shall exercise its reasonable efforts with respect to the provisions of any documentation relating to the Permitted Transfer as the Borough may reasonably request. Notwithstanding anything to the contrary in this Section 12.06, the failure of the Borough to approve the supporting documentation within thirty (30) days of receipt of the written notice of the Permitted Transfer, shall be deemed an approval of the supporting documentation.

(b) With respect to the Permitted Transfers set forth in Section 12.05(a)(vii)-(x) hereof, Redeveloper shall provide the Borough with notice after such Permitted Transfer and provide the Borough with the evidence of the transfer. No consent, approval or action by the Borough is required for such Permitted Transfers.

## ARTICLE XIII

### INDEMNIFICATION; INSURANCE

#### SECTION 13.01. Redeveloper Indemnification.

(a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Redevelopment Area and/or the Project Improvements, including but not limited to, (i) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or immediately adjacent to the Redevelopment Area and/or Project Improvements and which results, wholly or partially, from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from the gross negligence or willful misconduct of the Borough, its employees, representatives or agents, or (ii) any lawsuit or other proceeding commenced by any person or entity, because of action(s) or omissions taken by the Redeveloper, its contractors, employees, agents and representatives in connection with the Redevelopment Area and/or Project Improvements or this Redevelopment Agreement.

(b) The Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties and its officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; (ii) any bodily injury or property damage that may occur in the Redevelopment Area during the term of the Redevelopment Agreement, provided however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures.

(c) In any situation in which a Borough Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Borough Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Party, except to the extent such failure to give prompt notice materially impairs the Redeveloper's ability to defend such party. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Party, including the employment of counsel reasonably acceptable to the Borough Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense

thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized by the Redeveloper, which authorization shall not be unreasonably withheld or delayed. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Borough Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Borough Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Party is entitled to indemnification by the Redeveloper hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that a full release of the Borough Indemnified Party is obtained and no admission of liability by the Borough Indemnified Party is required. In the event the Borough Indemnified Party refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper or the Borough Indemnified Party, the Borough shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the Borough Indemnified Party's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 13.01 shall survive the termination of this Redevelopment Agreement.

#### **SECTION 13.02. Insurance Required.**

(a) Prior to the commencement of construction of the Project Improvements the Redeveloper shall furnish or shall cause to be furnished, to the Borough, evidence of commercial general liability insurance, insuring the Borough against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on all property in the Redevelopment Area or related to the construction thereon, in the amount of at least Ten Million Dollars (\$10,000,000.00) combined single limit coverage. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add the Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough to the extent of Redeveloper's obligations hereunder.

(b) Builder's Risk Insurance for the benefit of the Redeveloper, during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the Project Improvements, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(c) The Redeveloper shall also furnish or cause to be furnished to the Borough evidence reasonably satisfactory to the Borough that the Redeveloper and any contractor with whom it has contracted for the construction of the Project Improvements carries workers'

compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits.

(d) All insurance policies required by this section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least "A" VII in Best's Insurance Guide or such lesser rated provider that is proposed by the Redeveloper and is reasonably acceptable to the Borough.

(e) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (ii) the policies cannot be canceled except after thirty (30) days written notice by the insurer to the Borough, except ten (10) days notice for non payment of premium, and (iii) the Borough shall not be liable for any premiums or assessments. All such insurance shall contain cross liability endorsements.

(f) The Redeveloper's obligation to maintain insurance pursuant to, and in accordance with, this Section 13.02 shall terminate upon issuance of a Certificate of Completion with respect to the Project Improvements.

#### ARTICLE XIV

#### OMITTED

#### ARTICLE XV

#### ADDITIONAL TERMINATION RIGHTS

**SECTION 15.01. Additional Termination Rights of Borough.** This Redevelopment Agreement shall terminate upon notice by the Borough to the Redeveloper of its decision to so terminate, notwithstanding whether or not an Event of Default by the Redeveloper has occurred, if:

(a) The Redeveloper has not commenced construction on the Project Improvements on or before July 1, 2010;

(b) A final Certificate of Completion for the Project Improvements has not been issued on or before June 30, 2011, subject to the right of the Redeveloper to request an extension of time from the Borough for up to twelve (12) months, which extension shall not be unreasonably denied;

(c) The Redeveloper substantially abandons or suspends construction of the Project Improvements for a period in excess of ninety (90) consecutive days not resulting from the occurrence of Uncontrollable Circumstance, then, whether or not an Event of Default by the Redeveloper had been earlier declared by the Borough, the Borough shall have the right to terminate this Redevelopment Agreement, upon written notice to Redeveloper and the failure of the Redeveloper to resume construction within thirty (30) days of its receipt of the written notice.

(d) Nothing in this Section 15.01 shall prevent the Borough from declaring that a Redeveloper Event of Default by the Redeveloper hereunder has occurred nor from pursuing any of its other remedies hereunder, if it is required to do so pursuant to Applicable Law.

## ARTICLE XVI

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 16.01. Events of Default.** Any one or more of the following shall constitute an Event of Default hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any material covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order,

judgment or decree shall have continued unstated and in effect for any period of ninety (90) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper shall be in default of or violate its obligations with respect to the design, development and/or construction of the Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule), the Site Plan or the Plans, or shall abandon or substantially suspend construction work (unless such suspension arises out of an Uncontrollable Circumstance), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so, provided however, that if the default or violation is one which cannot be completely remedied within the ninety days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(d) The filing of a complaint in Foreclosure against the Redeveloper or the issuance of a deed in lieu of Foreclosure for any financing in connection with the Project.

(e) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project Improvements has been conveyed in the ordinary course of business) shall fail to pay any real estate taxes, payments in lieu of taxes, or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement except that there shall be no Event of Default if the Redeveloper files a timely appeal of any taxes or assessments, which it believes to be excessive, pursuant to law.

(f) There is a Transfer in violation of this Redevelopment Agreement.

**SECTION 16.02. Uncontrollable Circumstance.** Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of an Uncontrollable Circumstance.

**SECTION 16.03. Remedies Upon Events of Default by the Redeveloper.** If an Event of Default by the Redeveloper occurs, then the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable attorneys' fees and costs). Subject to any cure provisions afforded the Redeveloper hereunder, the Borough shall have the right, in its sole and absolute discretion, to terminate this Redevelopment Agreement and the Redeveloper's designation as the Redeveloper of the Redevelopment Area.

In the event that this Redevelopment Agreement is terminated by the Borough pursuant to this Section 16.03, the Borough shall terminate the Redeveloper's designation as the redeveloper of the Redevelopment Area.

Notwithstanding anything contained in this Agreement to the contrary, nothing contained herein shall preclude, limit or alter the Borough's right to acquire or obtain title to the Redevelopment Area through the exercise of the Borough's power of condemnation in accordance with the Redevelopment Law and the Eminent Domain Act if this Agreement shall be terminated for any reason whatsoever, but in such event the parties agree that the Redeveloper does not waive its right to interpose any defenses to any such condemnation action.

**SECTION 16.04. Remedies Upon Events of Default by the Borough.** In the event that an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable counsel fees and costs). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Borough, to terminate this Redevelopment Agreement.

**SECTION 16.05. Specific Performance.** If an Event of Default occurs, or a party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Borough or the Redeveloper and that money damages may not provide an adequate remedy thereto.

**SECTION 16.06. Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 16.07. Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a party be entitled to recover more than its actual damages.

**SECTION 16.08. Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

**SECTION 16.09. Litigation Costs.** In the event that a party to this Redevelopment Agreement pursues an action to enforce any remedy provided in this Article, the prevailing party,

whether plaintiff or defendant, shall be entitled to payment by the other party of all reasonable costs and expenses incurred in connection with such action.

**SECTION 16.10. Mitigation.** The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

## **ARTICLE XVII**

### **MISCELLANEOUS**

**SECTION 17.01. Notices.** Formal notices, demands and communications between the Borough and the Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Borough:

Borough of Carteret  
Municipal Building  
61 Cooke Avenue  
Carteret, New Jersey 07008  
Attn: Mayor and/or Borough Clerk

with copy to:

Matthew C. Karrenberg, Esq.  
DeCotiis, FitzPatrick, Cole & Wisler, LLP  
500 Frank W. Burr Blvd.  
Teaneck, New Jersey 07666

If to the Redeveloper:

KM Carteret Development, L.L.C.  
c/o Kinder Morgan Liquid Terminals, LLC  
1 Terminal Road  
Carteret, New Jersey 07008  
Attn: Kevin Golankiewicz

with copy to:

KM Carteret Development, L.L.C.  
c/o General Counsel  
One Allen Center  
Suite 1000  
500 Dallas Street  
Houston, TX 77002

and

Richard L. Rudin, Esq.  
Weiner Lesniak, LLP  
629 Parsippany Road  
Parsippany, New Jersey 07054-0438

**SECTION 17.02. Conflict of Interest.** No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

**SECTION 17.03. No Consideration For Redevelopment Agreement.** The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants, contractors and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

**SECTION 17.04. Non-Liability of Officials and Employees of the Borough.** No member, official, employee agent or consultant of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**SECTION 17.05. Non-Liability of Officials and Employee of Redeveloper.** No member, officer, shareholder, director, partner, affiliate or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Redevelopment Agreement unless such liability is separately assumed under a separate document.

**SECTION 17.06. Public Safety, Social and Fiscal Impacts; Traffic Improvements.** The Redeveloper will be obligated to address the public safety and social and fiscal impacts that may result from the Project Improvements, only to the extent expressly and specifically required by a resolution adopted by the Planning Board granting approval of a Site Plan for the Project Improvements.

**SECTION 17.07. No Brokerage Commissions.** The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

**SECTION 17.08. Provisions Not Merged With Deeds.** To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Redevelopment Area from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**SECTION 17.09. Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**SECTION 17.10. Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**SECTION 17.11. Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

**SECTION 17.12. Modification of Redevelopment Agreement.** No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**SECTION 17.13. Execution of Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

**SECTION 17.14. Prior Agreements Superseded.** This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof, including without limitation, the Memorandum of Agreement and the Pre-Development Agreement.

**SECTION 17.15. Waivers and Amendments in Writing.** All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate

authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper.

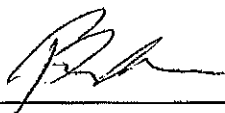
**SECTION 17.16. Drafting Ambiguities; Interpretation.** In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

**SECTION 17.17. Governing Law.** This Redevelopment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. The Borough may bring any action or proceeding to enforce or arising out of this Agreement in any court of competent jurisdiction. If the Borough commences such an action in a court located in the County of Middlesex, State of New Jersey, or any United States District Court in New Jersey, the Redeveloper hereby agrees that it will submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens, and in furtherance of such agreement, the Redeveloper hereby agrees and consents that without limiting other method of obtaining jurisdiction, personal jurisdiction over it in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Redeveloper by registered mail to or by personal service at the last known address of the Redeveloper pursuant to the notice section set forth in this Redevelopment Agreement as long as such process, pleadings, motion or application is also served on the General Counsel and counsel set forth in the notice section of his Redevelopment Agreement. Any action or proceeding brought by the Redeveloper arising out of this Redevelopment Agreement shall be brought solely in a court of competent jurisdiction located in the County of Middlesex, State of New Jersey, or in a United States District Court in New Jersey. The Redeveloper hereby waives any right to seek removal of any action or proceeding to state or federal court other than in New Jersey.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE].**

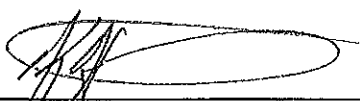
IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:

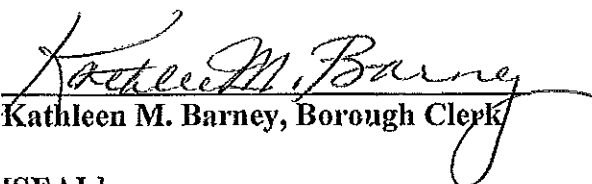
  
\_\_\_\_\_

REDEVELOPER  
KM CARTERET DEVELOPMENT, L.L.C.

By: KINDER MORGAN LIQUIDS  
TERMINALS, LLC  
Its Sole Member

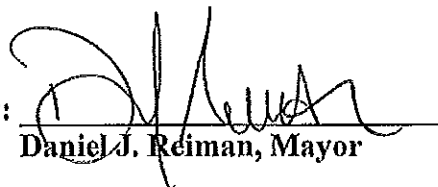
By:   
\_\_\_\_\_ Kevin H. Golankiewicz  
General Manager, Northeast Region

ATTEST:

  
Kathleen M. Barney, Borough Clerk

[SEAL]

BOROUGH OF CARTERET

By:   
\_\_\_\_\_ Daniel J. Reiman, Mayor

STATE OF New Jersey )  
COUNTY OF Middlesex )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March , 2010, by KM CARTERET DEVELOPMENT, L.L.C. , a New Jersey limited liability company (the "Redeveloper"), by Kevin H. Golankiewicz, General Manager, Northeast Region of Kinder Morgan Liquid Terminals, LLC, its sole member, on behalf of the Redeveloper.

Kathleen M. Barney  
Notary Public

Commission Expiration: \_\_\_\_\_ KATHLEEN M. BARNEY  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXP. JULY 13, 2014

STATE OF NEW JERSEY   )  
                                          )  
COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March , 2010, by the Borough of Carteret (the "Borough"), a municipal corporation of the State of New Jersey, by Daniel J. Reiman, its Mayor, on behalf of the Borough.



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Robert J. Bergen, Esq.  
Attorney at Law  
State of New Jersey

**EXHIBIT A**  
**REDEVELOPMENT PLAN**