AMENDED AND RESTATED

REDEVELOPMENT AGREEMENT

by and between

THE SOUTH AMBOY REDEVELOPMENT AGENCY,

THE CITY OF SOUTH AMBOY

and

MANHATTAN BEACH CLUB STREET, LLC

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EXHIBIT LIST

<u>REDEVELOPMENT AGREEMENT</u>

This **AMENDED AND RESTATED MASTER REDEVELOPMENT AGREEMENT** (the "**Agreement**" or "**Redevelopment Agreement**") is made and entered into as of this ____ day of _____________, 2019 (the "**Effective Date**") by and between the **SOUTH AMBOY REDEVELOPMENT AGENCY**, a redevelopment agency organized under the laws of the State of New Jersey (the "**State**"), having an address at 140 North Broadway, South Amboy, New Jersey, 08879 ("**SARA**"), the **CITY OF SOUTH AMBOY**, a municipal corporation of the State, having an address at 140 North Broadway, South Amboy, New Jersey, 08879 (the "**City**"), and **MANHATTAN BEACH CLUB STREET, LLC,** a Delaware limited liability company, having an address at 200 Meeting Street, Suite 206 Charleston, South Carolina 29401 (as further defined herein, the "**Redeveloper**" and, together with SARA and the City, each a "**Party**" and, together, the "**Parties**").

W I T N E S S E T H:

WHEREAS, the City is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A*. 40A:12A-1 *et seq.* (the "**Redevelopment Law**") to determine whether certain parcels of land within the Borough constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, by resolutions duly adopted, the City Council designated certain properties within the City, including without limitation, the parcels identified on the tax map of the City as Block 161.02, Lot 20, 23, 24, 24.01, 25, 90, 90.01, 6.02 and a portion of Lot 20.01 (the "**Beach Club District Properties**") as an "area in need of redevelopment" pursuant to the Redevelopment Law and the redevelopment laws which preceded it; and

WHEREAS, in accordance with the Redevelopment Law, and by ordinances duly adopted, the City Council adopted various redevelopment plans for the Beach Club District Properties; and

WHEREAS, SARA may exercise all powers, duties and functions relating to redevelopment in the manner of a redevelopment entity under the Redevelopment Law, which powers include contracting with redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work under <u>N.J.S.A.</u> 40A:12A-8.f; and

WHEREAS, to provide for the implementation of the redevelopment plans in the Redevelopment Area, SARA wished to contract with an entity capable of engaging in site acquisition, remediation, planning, and end-use development of the Beach Club District Properties; and

WHEREAS, an Affiliate (as defined herein) of Redeveloper has extensive experience in real estate development, remediation, leasing, and construction, especially involving property in designated redevelopment areas as well as the financial capacity and wherewithal sufficient to support the Redevelopment Project (as defined herein); and

WHEREAS, Redeveloper's Affiliates created Redeveloper to carry out the Redevelopment Project;

WHEREAS, SARA desired to avail itself of the expertise, advice, assistance, financial capacity, and other capabilities of Redeveloper for the remediation, planning and infrastructure development of the Beach Club District Properties, and the sale, lease, management, and/or construction of the separate developable phases thereof; and

WHEREAS, the Redevelopment Law, at N.J.S.A. 40A:12A-39.e and .f permits the City to enter into agreements and do all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of a redevelopment project; and

WHEREAS, on November 12, 2014, SARA adopted a resolution designating Redeveloper as the "redeveloper" of the Beach Club District Properties; and

WHEREAS, on November 12, 2014, SARA and the City executed a tri-party Redevelopment Agreement with Redeveloper (the "**Original Agreement**") in connection with the redevelopment of the Beach Club District Properties; and

WHEREAS, on December 17, 2014, by Ordinance No. 13-2014, the City Council adopted the Beach Club District Redevelopment Plan (the "**Original Redevelopment Plan**"), which redevelopment plan superseded and replaced the existing redevelopment plans as same related to the parcels comprising the Beach Club District Properties; and

WHEREAS, on December 19, 2018, by Ordinance No. 18-2018, the City Council amended the Beach Club District Redevelopment Plan (the "**First Amendment to Redevelopment Plan**"; the Original Redevelopment Plan amended by the First Amendment to Redevelopment Plan is hereinafter referred to as the "**Redevelopment Plan**"); and

WHEREAS, for lot consolidation rather than development purposes, certain of the Beach Club District Properties now identified on the tax map of the City as Block 161.02, Lots 6.03 and 6.04 were created through the subdivision of Block 161.02, Lots 6.02, 25 and 90, as established by that certain Subdivision Deed dated December 30, 2014 and recorded on January 5, 2015 in the Office of the Middlesex County Clerk at Deed Book 06649, Page 0710 *et seq*.; and

WHEREAS, the Redeveloper and its Affiliates are the owner of portions of the Beach Club District Properties consisting of Block 161.02, Lots 6.03, 6.04, 20 and 23; and

WHEREAS, as required by the Original Agreement, the City and the Redeveloper entered into the Sewer Capacity Agreement dated December 30, 2014 (the “**Redeveloper Sewer Agreement**”); and the Borough of Sayreville and the City entered into the Sayreville Sewer Agreement dated December 30, 2014 (the “**Sayreville Sewer Agreement**”), to acquire additional sewer capacity for the Redevelopment Project; and

WHEREAS, subject to the terms of this Agreement, the Parties have determined that Redeveloper as "master redeveloper" of the Site, shall be responsible for effecting the redevelopment of the Site through the: (a) construction of Public Improvements and Off-Site Improvements thereon, subject to public financial assistance, and (b) construction of the Redevelopment Project thereon, in each case, whether directly or through the selection of one or more Subredevelopers (as defined herein) qualified to carry out such development; and

WHEREAS, Redeveloper has proposed the designation of BNE Real Estate Group or one of its Affiliates (“**BNE**”), as a Subredeveloper and the conveyance of a portion of the Site consisting of the land described on Exhibits I and J hereto, which descriptions may change minimally from time to time (the “**BNE Sit**e”), to BNE; and

WHEREAS, SARA and the City have approved the proposed conveyance of the BNE Site to BNE for the construction of a residential rental project consisting of approximately 500 units in two (2) discrete components, with the number of residential units for each component, including the required number of affordable units, to be finalized at the time of site plan approval for such component (the “**BNE Project**”); and

WHEREAS, the first component of the BNE Project shall be referred to herein as the “**BNE Project Component 1**” and the second component of the BNE Project shall be referred to as the “**BNE Project Component 2**”, each to include a certain number of residential units along with parking spaces and amenity space for a clubhouse and pool; and

WHEREAS, SARA and the City have approved Redeveloper’s ability to identify, and negotiate with and propose to enter into agreements with, a Subredeveloper or Subredevelopers, which may or may not include BNE, for phases of the Redevelopment Project other than the BNE Project; and

WHEREAS, in order to effectuate the foregoing, the Parties wish to enter into this Amended and Restated Redevelopment Agreement,

NOW, THEREFORE, in consideration of the foregoing, the truth and accuracy of which is hereby acknowledged, and of the promises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereto do hereby covenant and agree each with the other as set forth herein.

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

Section 1.1 Definitions. The Parties agree that the following terms shall have the meanings specified below and shall be applicable equally to the singular and plural forms of such terms:

"**Accessory Commercial Uses**" shall have the meaning set forth in the Redevelopment Plan.

"**Acquisition Costs**" shall have the meaning set forth in Section 6.4.

"**Acquisition Notice**" shall have the meaning set forth in Section 6.1.

"**Acquisition Property**" shall have the meaning set forth in Section 6.1.

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person.

"**Affordable Housing Requirement**" shall have the meaning set forth in Section 5.1.

"Agreement" shall have the meaning set forth in the Recitals.

"**Applicable Law**" shall mean any statute, law, case law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding action which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Body and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Site, the Redevelopment Project, the performance of the Parties of the respective obligations or the exercise by the Parties of their respective rights under this Agreement. "Applicable Law" shall specifically include, without limitation, the Redevelopment Law, the MLUL, the Eminent Domain Act, the ERGG Law, the RAB Law, the Long Term Tax Exemption Law, and Environmental Laws.

"**Approval(s)**" shall mean any one or more approvals, authorizations, permits, licenses or certificates required and issued or granted by any Governmental Body having jurisdiction, whether Federal, State, County or City, to the extent necessary to implement the Redevelopment Project, or any Phase or portion thereof including but not limited to those Approvals identified on **Exhibit A**. Unless otherwise provided in this Agreement or by law, Approvals shall be unconditional (or subject to conditions acceptable to Redeveloper in its discretion), with all applicable appeal periods having expired without any appeal having been taken by a third party therefrom or, if an appeal has been taken, such appeal has been disposed of to the reasonable satisfaction of the Redeveloper without the right to further appeal, or if there is a right to further appeal, the time period therefore has expired without further appeal. Subsequently, as requested by Redeveloper, or if Approvals are subject to conditions, SARA shall diligently work with Redeveloper to modify the description of the Redevelopment Project to be undertaken as necessary and appropriate.

"**Business Day**" shall mean any Day other than a Saturday, a Sunday, or a Day on which banks and public offices generally are not open under the laws of the State.

"Certificate of Completion" shall mean written acknowledgement by SARA, in recordable form, that the Redeveloper or Subredeveloper, as applicable, has Completed Construction of the Redevelopment Project, or any Phase of the Redevelopment Project, as applicable, in accordance with the requirements of the Redevelopment Plan and the Redevelopment Agreement.

"**Certificate of Occupancy**" shall mean the temporary or final certificate as defined in Chapter 23 of Title 5 of the New Jersey Administrative Code in connection with construction projects or other improvements.

"**City**" shall have the meaning set forth in the Recitals.

"**COAH Fee**" shall have the meaning set forth in Section 5.1(a).

"**COAH Units**" shall have the meaning set forth in Section 5.1(b).

"**Commencement of Construction**" or "**Commence** shall mean the start of any undertaking by Redeveloper or Subredeveloper, as applicable, of any physical construction at the Site, or any Phase of the Site, as applicable, including utility improvements and site work.

"**Completion,**" "**Complete**" or "**Completed**" shall mean with respect to the Redevelopment Project or any Phase, as the case may be, that (a) all work related to the Redevelopment Project or applicable Phase has been completed, acquired, or installed in accordance with this Agreement, the Redevelopment Plan and all Applicable Law so that the Redevelopment Project or applicable Phase that has been completed may be used and operated for its intended use; (b) all Approvals, including a Certificate of Occupancy, has been issued; and (c) such "completion" has been evidenced by SARA issuing a Certificate of Completion.

"**Concept Plan**" shall mean collectively, the concept plans shown in **Exhibit B,** as such may be revised with SARA's consent, outlining, respectively, a detailed plan for development on Block 161.02, Lots 6.03 and 6.04, including the Redeveloper's proposed uses and densities.

"Control", "**Controlling**", "**Controlled by**" and "**under common Control with**" shall mean with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Controlling Parties" shall mean the persons listed on **Exhibit C.**

"**County**" shall mean the County of Middlesex, State of New Jersey.

"**Creditors' Rights Limitations**" shall include any and all bankruptcy, insolvency or other laws or legal or equitable principles affecting the enforcement of creditors' rights generally.

"**Day**" shall mean a calendar day.

"**Declaration**" shall have the meaning set forth in Section 8.2.

"Declaration of Taking" shall mean a Declaration of Taking filed by SARA in a proceeding commenced under the Eminent Domain Act, in accordance with the provisions of Article VI.

"**Design Standards**" shall mean the standards set forth in **Exhibit D**, which shall apply to the Redevelopment Project.

"**Effective Date**" shall have the meaning set forth in the Recitals.

"**Eminent Domain Act"** shall mean N.J.S.A. 20:3-1 *et seq.*, as amended and supplemented.

"**Environmental Laws**" shall mean each and every Federal, State, County or local statutes, ordinances, rules, regulation and common law concerning the protection of the environment, human health or safety, presently in effect, including, without limitation, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.; New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; Clean Air Act, 42 U.S.C. §7401 et seq.; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §1100 et seq.; Safe Drinking Water Act, 42 U.S.C. §300 et seq.; Pollution Prevention Act of 1990, 42 U.S.C. §13101 et seq.; Clean Water Act, 33 U.S.C. §1251, et seq.; Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; and the Hazardous Materials Transportation Uniform Safety Act of 1990 49 U.S.C. §5101.

"ERGG Law" shall have the meaning set forth in Section 4.2.

"ERGGs" shall have the meaning set forth in Section 4.2.

"**Escrow Account**" shall have the meaning set forth in Section 4.3.1.

"**Event of Default**" shall have the meaning set forth in Section 9.1.

“**Exhibit(s)**” shall mean any exhibit, schedule, document or other material attached hereto, which shall be deemed to be a part of this Agreement as if set forth in full in the text hereof.

“**Fair Housing Act**” shall have the meaning set forth in Section 5.1.

“**Final and Unappealable**” an approval or other governmental action shall be final and unappealable after the expiration of all relevant appeal periods, without an appeal having been filed, or if an appeal has been filed with the appeal being resolved in favor of the City and/or Redeveloper with no further right to appeal remaining.

“**First Amendment to Redevelopment Plan**” shall have the meaning set forth in the Recitals.

“**Force Majeure”** shall have the meaning set forth in Section 9.2.

“**Foreclosure”** shall have the meaning set forth in Section 13.4.

“**Governmental Body”** shall mean any Federal, State, County or City agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government.

“**Holder**” shall have the meaning set forth in Section 13.1.

“**Holder Failure**” shall have the meaning set forth in Section 13.5.

“**Improvements**” shall mean all modifications and additions to the Site (or as otherwise described herein) made as part of, or in connection with, the Redevelopment Project, and including without limitation, all buildings and structures, fixtures and equipment, infrastructure, Public Improvements, Off-Site Improvements, landscaping, plantings, and all materials, structures and equipment related thereto, as constructed, created or added by (or on behalf of) Redeveloper, and all substitutions, replacements, renovations, additions and accretions thereto.

“**Long Term Tax Exemption Law**” shall mean N.J.S.A. 40A:20-1 et seq., as the same may be amended or supplemented from time to time.

“LSRP” shall have the meaning set forth in Section 3.7(a).

“**Notice Not to Proceed**” shall have the meaning set forth in Section 6.2.

“**Notice to Proceed**” shall have the meaning set forth in Section 6.2.

“**MLUL”** shall mean the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., as the same may be amended or supplemented from time to time.

“**Offer**” shall have the meaning set forth in Section 6.3.

“**Offer Price**” shall have the meaning set forth in Section 6.3.

“**Off-Site Improvements**” shall mean any Improvement or utility necessitated or required by the Planning Board for the implementation of the Redevelopment Project, which is not located on the Site, including those specific Improvements identified on the Concept Plans.

“**Original Redevelopment Plan**” shall have the meaning set forth in the Recitals.

“Party” or “**Parties**” shall have the meaning set forth in the Recitals.

“**Person**” shall mean any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.

“**Phase**” shall have the meaning set forth in Section 3.1(c).

“PILOT” shall mean a payment in lieu of taxes pursuant to the Long Term Tax Exemption Law or other authority.

“**Planning Board**” shall mean the Planning Board of the City of South Amboy.

“**Public Improvements**” shall mean those Improvements to be constructed by the Redeveloper and dedicated to the City, or other Governmental Body or made available to the public pursuant to an easement, as applicable, all as set forth on the Concept Plans including, but not limited to, the extension of the waterfront walkway across the entire Site (the “**Waterfront Walkway**”), bulkheads, piers and other facilities needed to support the Waterfront Walkway, trails, sidewalks, pocket parks, benches and park amenities, lighting, the beach and park Improvements located on the easternmost portion of the Site, the streets, parks, and utilities.

“Public Improvements Easement” shall mean the easement referenced in **Exhibit H.**

“**Qualified Entity**” shall mean (a) Redeveloper (at the time of execution of this Agreement, and thereafter so long as it remains in compliance with the terms of this Agreement), (b) any Affiliate of Redeveloper, (c) any Person of which Redeveloper and/or an Affiliate of Redeveloper is the sole beneficial owner, (d) any Person of which Redeveloper and/or an Affiliate of Redeveloper together with one or more Qualified Entity(ies) are collectively the sole beneficial owners, or (e) such other Person that SARA in its reasonable discretion determines complies with the provisions of Section 10.4.

“**RABs”** shall have the meaning set forth in Section 4.2.

“**RAB Law”** shall have the meaning set forth in Section 4.2.

“**Redeveloper**” shall have the meaning set forth in the Recitals.

“**Redeveloper Covenants**” shall have the meaning set forth in Section 8.1.6.

“Redeveloper Executive” shall have the meaning set forth in Section 11.1.

“Redeveloper Sewer Agreement” shall have the meaning set forth in the Recitals.

“Redevelopment Law” shall have the meaning set forth in the Recitals.

“**Redevelopment Plan**” shall have the meaning set forth in the Recitals and shall encompass any amendment of the Redevelopment Plan necessary to permit the Redevelopment Project as contemplated in this Agreement.

“Redevelopment Project” shall mean the development and construction to be undertaken on the Site in accordance with the provisions of this Agreement (including but not limited to the Concept Plan), the Redevelopment Plan and Applicable Law.

“**Riparian Lands**” shall have the meaning set forth in Section 6.8.

“**SARA**” shall have the meaning set forth in the Recitals.

“SARA/City Costs” shall have the meaning set forth in Section 4.3.

“**SARA Representative**” shall mean the individual designated in writing to act on behalf of SARA pursuant to Section 11.2.

“Sayreville Sewer Agreement” shall have the meaning set forth in the Recitals.

“Schedule” shall mean the schedule for the Commencement and Completion of the Redevelopment Project, including, but not limited to the Off-Site Improvements and Public Improvements all as set forth in **Exhibit E.**

“Site” shall mean:

Block 161.02, Lots 6.03, 6.04, 20 and 23; and

Block 161.02, Lots 24 and 24.01 (the **“Wische Parcels**”).

“**Site Due Diligence Activities**” shall mean the analyses and investigations elected by Redeveloper to be conducted by (or on behalf of) Redeveloper with respect to any portion of the Site. Site Due Diligence Activities may include, without limitation, environmental assessments and investigations, wetlands delineations, geotechnical analysis, analysis of remediation and infrastructure requirements, and analysis, and traffic studies.

“**State**” shall have the meaning set forth in the Recitals.

"**Subredeveloper**" shall mean an entity: (a) who has been approved as a Subredeveloper by the Redeveloper in accordance with this Agreement, (b) to whom responsibility for construction and implementation of one or more Phases is transferred from Redeveloper, and (c) who has been designated as Subredeveloper or Redeveloper by, and executed a Subredevelopment agreement or Redevelopment Agreement with, SARA and the City for the development of such Phase or Phases in a form approved by Redeveloper ("**Subredevelopment Agreement**").

"**Title Insurance Commitment**" shall have the meaning set forth in Section 6.6(a).

"**Title Insurer**" shall have the meaning set forth in Section 6.6(a).

"**Title Objections**" shall have the meaning set forth in Section 6.6(b).

"**Transfer**" shall mean the sale, exchange, conveyance or other disposition of any or all of the interest of Redeveloper in the Redevelopment Project or Redevelopment Area, whether by operation of law or otherwise.

"**Wische Parcels**" shall have the meaning set forth in the definition of "Site."

Section 1.2 <u>Interpretation and Construction</u>. In this Agreement, unless the context expressly otherwise requires:

(a) The terms "hereby", "hereof', "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before the Effective Date.

(b) Any headings preceding the texts of the several Articles and Sections of this 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 Agreement, nor shall they affect its meaning, construction or effect.

(c) 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. The words "consent" or "approve" or words of similar import, shall mean the prior written consent or approval of SARA or Redeveloper, as the case may be, unless expressly stated to the contrary herein.

(d) Each right of SARA or Redeveloper to review or approve any actions, plans, specifications, or other obligations hereunder shall be exercised by SARA official(s) or Redeveloper official(s) with the 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 either Party, the applicable Person shall inform the Person requesting such information of all applicable officials having requisite approval powers to review or grant such requests for approval.

(e) All references to Recitals, Articles, Sections or Exhibits shall, unless otherwise indicated, refer to the Recitals, Articles, Sections or Exhibits in this Agreement.

(f) Words importing a particular gender mean and include correlative words of every other gender.

(g) 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, or as otherwise expressly provided in the Agreement, or unless context dictates otherwise.

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

(i) The use of the phrases "consult with", "in consultation with", "in collaboration with", "provide an opportunity to comment", and/or "working collaboratively" and similar phrases used anywhere in this Agreement with respect to the Parties shall, in each instance, be construed as imposing a reciprocal duty of good faith and best efforts upon each Party with respect to resolution of each and every issue, obligation and/or action that is the subject of such consultation or collaboration.

(j) The phrase "sole and absolute discretion" shall, in each instance, be construed as permitting the applicable Party the right to exercise its judgment without limitation and make a determination for no reason or any reason whatsoever.

ARTICLE II

DESIGNATION OF REDEVELOPER; TERM OF AGREEMENT

Section 2.1 Appointment of Redeveloper. Subject only to the designation of a Subredeveloper for a specific Phase or Phases of the Redevelopment Project pursuant to a Subredevelopment Agreement, all in accordance with Section 2.4 herein, Redeveloper remains designated and appointed as the exclusive redeveloper of the Site and is hereby designated and appointed to act as the exclusive "master redeveloper" of the Site. In connection with such designation and appointment, Redeveloper has the exclusive right (i) to perform any and all development and redevelopment activities on and about the Site, and (ii) to select, and negotiate and enter into agreements with, any Subredeveloper for any of the Phases, under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan and Applicable Law. SARA agrees that, while this Agreement remains in effect, it shall not negotiate or consider proposals from any other Person for the Site, except as otherwise permitted pursuant to the terms of this Agreement at the request of Redeveloper.

Section 2.2 Term. Unless terminated prior thereto, the term of this Agreement shall extend until the issuance of the final Certificate of Completion for the entire Redevelopment Project but not more than thirty (30) years from the Effective Date of this Agreement.

Section 2.3 Conditions Precedent; Redeveloper's Right to Early Termination. This Agreement may terminate as to all or part of the Site, at the sole and absolute discretion of Redeveloper, upon the occurrence of an uncured Event of Default by SARA (subject to SARA's right to contest such termination in an appropriate forum) or if the following material conditions, which are conditions precedent to Redeveloper's obligation to perform under this Agreement with respect to each parcel included in the Site are not fulfilled so as to resolve the condition precedent on the relevant parcel:

(a) All Approvals for the Redevelopment Project have been obtained in the form and content satisfactory to Redeveloper, are in full force and effect, and are Final and Unappealable;

(b) All administrative proceedings required to carry out the Redevelopment Project, as contemplated by the Approvals, this Agreement, and any decisions by the Planning Board, shall have been completed, and all other actions, hearings, proceedings or determinations required to be taken, held and/or rendered, as the case may be, by the City, the Planning Board, SARA, the New Jersey Department of Environmental Protection and/or any other agency or authority in the form and content satisfactory to Redeveloper in order for the Redevelopment Project to be constructed and operated in a manner contemplated by the Approvals and this Agreement; and such determinations are Final and Unappealable;

(c) Redeveloper has obtained financing on terms reasonably acceptable to Redeveloper, consistent with the reasonable exercise of sound business judgment as would be appropriate for a similarly situated redeveloper;

(d) All Site Due Diligence Activities have been completed and the condition of the Site has been found acceptable to Redeveloper, in Redeveloper's sole and absolute discretion provided that once any portion of the Site has been acquired by Redeveloper this condition shall be satisfied as to that portion of the Site;

(e) Redeveloper has acquired or otherwise obtained all easements, licenses and rights of way necessary for the Redevelopment Project on terms reasonably acceptable to the Redeveloper; and

(f) The City has adopted the First Amendment to Redevelopment Plan, and such amendment is Final and Unappealable; and

(g) Redeveloper has entered into a financial agreement pursuant to the Long Term Tax Exemption Law on terms satisfactory to Redeveloper and City and has obtained additional financial support satisfactory to Redeveloper and City, including but not limited to a PILOT, RAB or ERGG or Transportation Investment Generating Economic Recovery programs as described in greater detail in Section 4.2 provided that nothing herein shall obligate the City to enter into a financial agreement or otherwise provide financial support.

The issuance of a building permit for any portion of the Redevelopment Project shall constitute proof that all of the conditions precedent set forth in Section 2.3 have been satisfied, as to the parcel of property for which the building permit has been issued, except to the extent that such conditions impose an ongoing and continuing obligation so as to resolve the condition precedent on the relevant parcel.

Upon any termination by the Redeveloper hereunder, Redeveloper shall no longer be the designated "redeveloper" or "master redeveloper" for purposes of the Redevelopment Law with respect to the part of the Site for which it has been terminated and the applicable portion of the Site may no longer be developed by Redeveloper unless a new redevelopment agreement is executed by a designated redeveloper, the City and SARA.

Section 2.4 Master Redeveloper; Subredevelopment.

a) In its role as the "master redeveloper" of the Redevelopment Project, Redeveloper shall have the right, but not the obligation, to identify one or more prospective Subredevelopers for any portion or Phase of the Redevelopment Project. In connection therewith, Redeveloper shall have the right, but not the obligation, to request bids for certain Phases, to review the qualifications of prospective Subredevelopers, to review the proposed design, development, construction and operation of any such Phase or Phases by a prospective Subredeveloper, to negotiate the terms of the Subredeveloper arrangement, including without limitation the required off-site improvements for such Phase, the desirability of a sale, leasehold or other transfer concept for such Phase, and the terms of such sale, leasehold or other transfer concept, and to enter into any agreements relating to any of the foregoing.

b) Upon Redeveloper being satisfied, in its sole and absolute discretion, with any prospective Subredeveloper and its proposed Subredevelopment plan for the applicable Phase or Phases of the Redevelopment Project, a prospective Subredeveloper shall, subject to Redeveloper's consent, submit to SARA an application to become a Subredeveloper (a "**Subredeveloper Application**"), which may include the following: (i) a proposed concept plan for the applicable Phase of the Redevelopment Project; (ii) a proposed project team for the applicable Phase of the Redevelopment Project; (iii) the development qualifications of the prospective Subredeveloper; (iv) the ownership structure and financial wherewithal of the prospective Subredeveloper; and (v) a list of government approvals required for the applicable Phase. SARA and the City will review a Subredeveloper Application containing the foregoing items for purposes of determining whether to (a) designate such prospective Subredeveloper as a Subredeveloper under this Agreement and a "redeveloper" under the Redevelopment Law, (b) negotiate and enter into a Subredevelopment Agreement with such prospective Subredeveloper and (c) approve the Transfer of the applicable Phase or Phases by Redeveloper to the prospective Subredeveloper (collectively, the "**SARA Subredeveloper Actions**").

c) Upon the submission of a Subredeveloper Application, SARA shall use reasonable, good faith efforts to undertake the review of all such materials submitted on an expedited basis, and shall provide Redeveloper with written notice within twenty (20) days from the date of receipt of the Subredeveloper Application indicating that either (i) SARA and the City are prepared to take the SARA Subredeveloper Actions ("Initial Subredeveloper Approval"), or (B) SARA and the City are not prepared to take such actions, in which case SARA and the City shall outline the reasons for their unwillingness to take the SARA Subredeveloper Actions, which such reasons must be reasonable under the circumstances. If SARA or the City indicates that it is not willing to take such actions, the prospective Subredeveloper, subject to Redeveloper's consent, may revise the Subredeveloper Application in accordance with the comments from SARA and the City and resubmit same for further review. SARA and the City will thereafter use reasonable, good faith efforts to confirm that any requested changes have been satisfactorily addressed so that SARA and the City are prepared to take the SARA Subredeveloper Actions, and shall provide Redeveloper with written notice within ten (10) days from the date of receipt of the revised Subredeveloper Application. SARA and the City acknowledge and agree that their timely review and comment of any Subredeveloper Application is critical to the success of the Redevelopment Project and a material consideration for Redeveloper under this Agreement. Upon the issuance of an Initial Subredeveloper Approval, and subject to the reasonable cooperation and good faith efforts of Redeveloper and the prospective Subredeveloper, SARA and the City agree to use reasonable, good faith efforts to negotiate and finalize a Subredevelopment Agreement and to take the SARA Subredeveloper Actions, and shall endeavor to take such actions within sixty (60) days of the Initial Subredeveloper Approval.

d) Subject to the review and approval of Redeveloper, SARA and the City acknowledge and agree that the terms of any Subredevelopment Agreement shall include certain terms required to protect Redeveloper's rights and obligations as the "master redeveloper" of the Redevelopment Project, including without limitation that: (i) Redeveloper shall be a third party beneficiary under any Subredevelopment Agreement; (ii) Redeveloper may, but without any obligation to do so, upon written notice to SARA and the City, take over the role of Subredeveloper under the applicable Subredevelopment Agreement, but unless and until Redeveloper elects to do so in writing, Redeveloper shall have no obligations thereunder; (iii) Redeveloper shall be given copies of all notices under any Subredevelopment Agreement simultaneously with the other parties; and (iv) Redeveloper shall have the right and a reasonable opportunity, but no obligation, to cure any defaults by a Subredeveloper under any applicable Subredevelopment Agreement.

e) Notwithstanding anything to the contrary contained in this Agreement or any other agreement of SARA or the City or both: (1) the effectiveness of any Subredevelopment Agreement and any designation of a prospective Subredeveloper as a Subredeveloper under this Agreement and a "redeveloper" under the Redevelopment Law, regardless of whether SARA or the City or both has taken one or more of the SARA Subredeveloper Actions, shall be contingent upon the effectiveness of a Transfer of Redeveloper's interest in the applicable Phase or Phases of the Redevelopment Project and the corresponding interest in the relevant portion of the Beach Club District Properties to the applicable Subredeveloper, and Redeveloper shall have the right, but not the obligation, at any time prior to the effectiveness of such Transfer, to determine not to proceed with such Transfer, with such determination being made in Redeveloper's sole and absolute discretion, and to provide SARA and the City with written notice regarding same, in which case any previous SARA Subredeveloper Actions with respect to such Phase or Phases shall be null and void and of no further force and effect; (2) as of the effective date of any Subredevelopment Agreement for an applicable Phase or Phases, subject only to Redeveloper asserting certain affirmative rights pursuant to Section 2.4(d) above, Redeveloper and its Affiliates shall automatically be released, without any further action from any Parties, from any and all obligations, responsibilities, liabilities, claims, causes of action, suits, proceedings, damages and losses, in law or equity, fixed or contingent, known or unknown, now or hereafter existing, that relate to or arise out of (i) this Agreement with respect to the applicable Phase or Phases of the Redevelopment Project governed by the Subredevelopment Agreement and subject to the Transfer by Redeveloper, (ii) the construction, development and operation of the applicable Phase or Phases governed by the Subredevelopment Agreement and subject to the Transfer by Redeveloper, and (ii) any breach or violation of the Subredevelopment Agreement relating to the applicable Phase or Phases subject to the Transfer by Redeveloper, it being understood that a Subredeveloper who, having been Transferred a specific Phase or Phases from Redeveloper, defaults or fails to perform its obligations under its Subredevelopment Agreement shall not create a default or breach other than with regard to the specific Phase or Phases that have been Transferred to Subredeveloper and are governed by the Subredevelopment Agreement, and only for its specific obligations under the applicable Subredevelopment Agreement.

f) This Section 2.4 shall not be construed to alter, limit or restrict the rights of Redeveloper pursuant to Article X of this Agreement relating to Permitted Transfers.

g) Subject to the terms and conditions of Section 2.4(e), SARA and the City have taken the required SARA Subredeveloper Actions with respect to BNE and its proposed development of the BNE Project on the BNE Site, including conditionally designating BNE as the Subredeveloper for the BNE Site and entering into a conditional Subredevelopment Agreement for the BNE Site, the effectiveness of which is contingent upon (i) with respect to BNE Project Component 1, Redeveloper Transferring title to BNE for such component, and (ii) with respect to BNE Project Component 2, Redeveloper Transferring title to BNE for such component. SARA and the City acknowledge and agree that they have reviewed and approved BNE's project team, design qualifications, ownership structure and financial wherewithal, and, provided there have been no material changes in same as of the time of any future application by BNE to become a Subredeveloper for any additional Phase(s), SARA and the City find such qualifications sufficient for BNE to be designated as a Subredeveloper and to enter into a Subredevelopment Agreement for other Phases of the Redevelopment Project, subject to (i) Redeveloper's consent to BNE becoming a Subredeveloper for any future Phase(s), which Redeveloper may withhold in its sole and absolute discretion, and (ii) the review and approval by SARA and the City of a concept plan and the list of required governmental approvals for any such future Phase(s), which shall not be unreasonably withheld and which shall otherwise be reviewed in accordance with this Section 2.4.

h) SARA and the City agree that during the period between an Initial SARA Subredeveloper Approval and Redeveloper Transferring title to the applicable Phase or Phases of the Redevelopment Project to a Subredeveloper in accordance with the terms of this Agreement, SARA and the City shall cooperate in good faith with such Subredeveloper in connection with its efforts to facilitate the redevelopment of the applicable Phase or Phases, including but not limited to cooperating with the prospective Subredeveloper's efforts to obtain Approvals for the relevant Phase or Phases of the Redevelopment Project, as outlined in the relevant Subredeveloper Application; provided, however, that such activities by any prospective Subredeveloper shall be subject at all times to Redeveloper's consent and approval of same, which may be withheld in Redeveloper's sole and absolute discretion.

ARTICLE III

IMPLEMENTATION OF REDEVELOPMENT PROJECT

Section 3.1 <u>Implementation of Redevelopment Project</u>.

(a) Redeveloper agrees, at its sole cost and expense, to implement the Redevelopment Project consistent with the Redevelopment Plan and in accordance with this Agreement including, but not limited to, the Concept Plan and the Schedule subject to the conditions precedent set forth in Section 2.3, and the last sentence of Section 3.5. The development to be constructed as part of the Redevelopment Project and the related Concept Plan may be amended from time to time with SARA's approval, which shall be granted if the request for amendment is driven by forces, factors, or circumstances that occur subsequent to the Effective Date and affect the development or marketability of the Redevelopment Project, including but not limited to a general decline in market demand for the development product envisioned in the Concept Plan, technological advances rendering the Concept Plan obsolete or less than optimal for the market, and other long-term trends that may be expected to require adjustment of the Concept Plan over the build-out period. The Redevelopment Project shall only contain those uses permitted in the Redevelopment Plan, which may be amended from time to time. Notwithstanding the above or anything herein to the contrary, in no event shall there be (i) any commercial or retail uses on the Site (other than a restaurant on Block 161.02, Lots 20 or 23 or Accessory Commercial Uses on Block 161.02, Lots 6.03 and 6.04) or (ii) more than One Thousand Seven Hundred Fifty (1,750) residential units (excluding the COAH Units) on Block 161.02, Lots 6.03 and 6.04. Should the Redeveloper determine to acquire the Wische Parcels, the Parties shall negotiate and execute an amendment to this Agreement.

(b) All activities performed under this Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class residential developments and the Redevelopment Project shall materially comply with the Design Standards.

(c) Notwithstanding anything to the contrary contained herein, the Redevelopment Project contemplated by this Agreement may be divided, at the Redeveloper's discretion, into separate phases or portions (each a "**Phase**"), which may proceed in such order and phases as elected by Redeveloper in its discretion. A single building or structure may constitute a Phase, and the precise configuration and determination of size, location, and design of each Phase shall be determined by Redeveloper at its election, subject to the parameters in the Redevelopment Plan. The phasing, sequencing of construction and the dates on which each Phase is to be commenced shall be determined by Redeveloper, and nothing shall preclude or limit the right of Redeveloper to allow or cause the commencement of work on multiple Phases consecutively or concurrently. The subdivision of one or more Phases within the Site for development by Redeveloper or a Subredeveloper shall not constitute a subdivision for development of the remaining portions of the Site, but rather shall be treated as a subdivision for lot consolidation purposes.

Section 3.1.1 **Role of Redeveloper**. Pursuant to the terms of this Agreement, and any subsequent agreements, Redeveloper shall act as master redeveloper of the Site and shall have the exclusive right to (a) acquire, as applicable, assemble, and remediate the Site, (b) design, permit, construct and operate the Redevelopment Project, as authorized by the Redevelopment Plan, and (c) select, and negotiate and enter into any agreements with, any Subredeveloper.

Section 3.2 Rights and Obligations of Redeveloper.

Section 3.2.1 **General Rights and Obligations of Redeveloper**. Redeveloper shall supply all services reasonably required to undertake the Redevelopment Project in an efficient manner consistent with reasonable and prudent real estate practice under the prevailing economic and real estate market conditions, as well as the reasonable policies, goals, and objectives of SARA. Such services shall include, but shall not be limited to, the following:

(a) Undertaking Site Due Diligence Activities at the Redeveloper's discretion in the manner and on the schedule that the Redeveloper determines. For this purpose, SARA shall provide Redeveloper access to all properties in the Site that are owned by SARA. To the extent permitted by the Redevelopment Law and the Eminent Domain Act, SARA hereby designates Redeveloper, at Redeveloper's election, as its agent for the purpose of conducting Site Due Diligence Activities on properties owned by third parties that are being acquired for the Redevelopment Project. SARA shall, at Redeveloper's reasonable cost and expense, take any and all legal action required to give Redeveloper access to said properties to conduct the Site Due Diligence Activities.

(b) Administering the day-to-day operations at the Site during the development and construction of the Redevelopment Project, including performing and supervising such administrative, operational and management functions as may be necessary. Redeveloper shall retain such personnel and consultants as may be reasonably required, from time to time. All persons employed on the Site shall be employees of, consultants to, or subcontractors of Redeveloper or its Affiliate, or of an entity under contract with the Redeveloper for a Phase or portion of the Redevelopment Project.

(c) Paying such fees and expenses of the Redevelopment Project as may be required pursuant to this Agreement;

(d) Bearing responsibility, as to the Site, for all matters necessary to undertake the Redevelopment Project and the budget therefore, including the following:

(i) Implementation of the environmental remediation of affected portions of the Site pursuant to Environmental Laws;

(ii) Preparation of the plans to develop the Site, including proposed land uses, timing of Phases, installation of infrastructure, direction and coordination of all professionals, and implementation of site plans;

(iii) Supervision and management, through on-site or off-site personnel, of all construction and engineering, including, but not limited to, site improvement construction, landscaping, purchasing, contracting and contract administration, and on-site modifications thereof in a good and workmanlike manner in accordance with all Applicable Laws;

(iv) Coordination of development plans with respect to public utilities and services;

(v) Negotiation of and acquisition of easements that Redeveloper, in its sole and absolute discretion, believes to be necessary to facilitate the undertaking of the Redevelopment Project. Such easements may be located within or outside of the Site and may include, without limitation, easements for road access, utilities, or construction including access to perform work in or around the areas covered by water to the extent required to perform work on the Improvements for the waterfront. If the Redeveloper is unable to acquire a required easement by way of negotiation, Redeveloper may request that SARA acquire the easement by way of condemnation, and SARA shall do so in accordance with the provisions set forth in Article VI.

(vi) Determination of whether subdivision, lot consolidation, or creation of a condominium would further the Redevelopment Project and implementation of same in Redeveloper's sole and absolute discretion. The Parties acknowledge that this Agreement constitutes SARA's consent thereto and that no additional consent by SARA to consolidate, subdivide or condominiumize the Site, or any combination thereof, is required.

(vii) Submission of applications to the Planning Board for any approvals, including site plan approval, subdivision approval, or any other approval by the Planning Board necessary to undertake the Redevelopment Project in accordance herewith. Specifically, Redeveloper shall have the right to seek general development plan approval, prior to or in conjunction with site plan approval, if Redeveloper chooses to do so in its sole and absolute discretion;

(viii) Coordination and submission of applications for all Approvals required to undertake the Redevelopment Project.

Section 3.2.2 <u>Insurance</u>. Upon acquiring title to any portion of the Site, Redeveloper shall take such actions as may be required to see that the relevant portion of the Site is appropriately insured, with insurers licensed to do business or authorized to issue policies in the State, against such insurable hazards and risks as is customary and appropriate in the circumstances. Such insurance shall comply with the following requirements, including, without limitation, the following kinds and minimum amounts of insurance, with such variations as may reasonably be required to conform to customary insurance practice:

(a) Builder's risk property Insurance (completed value, non-reporting form) during the term of construction of any Improvements that will protect against loss or damage on an "all-risk" or "special form" policy form (including vandalism and malicious mischief). The limits of liability shall be equal to one hundred (100%) percent of the insurable value of the Improvement being constructed, including labor and materials connected therewith, whether in or adjacent to any structure insured, and materials in place or to be used as part of the permanent construction; and

(b) Upon commencement of remediation or construction related to the any portion of the Redevelopment Project and until such construction has been Completed, Redeveloper shall obtain commercial general liability and property damage insurance with combined single limits of not less than Five Million Dollars ($5,000,000.00) per occurrence with respect to bodily/personal injury and property damage and shall include special-form contractual coverage and indemnification and hold harmless provisions; and

(c) Worker's Compensation Insurance in accordance with all requirements of law.

(d) Redeveloper shall provide proof of all required insurance coverage within thirty (30) Days of the necessity therefor, and with respect to 3.2.2(a), prior to Commencement of Construction of any Improvements. All liability policies shall name Redeveloper, SARA, and the City as additional insureds, as their interests may appear. Builder's risk policies shall provide coverage for Redeveloper, SARA, the City and all contractors and subcontractors, as their interests may appear.

Section 3.2.3 **Board Oversight**. Redeveloper, or at Redeveloper's sole discretion, a Subredeveloper, shall attend and participate in quarterly progress meetings with representatives of SARA to report on the status of the Redevelopment Project. Such presentation and information shall not include financial statements related to the Redeveloper or any of its Affiliates. SARA shall have the right to enter the Site, upon reasonable notice to Redeveloper if Redeveloper owns same, to inspect the Site and any and all work in progress.

Section 3.2.4 **Compliance with Laws**. Redeveloper shall implement the Concept Plan in conformity with all Applicable Laws and any other requirements made applicable solely by reason of the source or manner of financing all of a portion of the Redevelopment Project.

Section 3.2.5 **Compliance with Redevelopment Plan and Applicable Law**. Redeveloper shall take all necessary steps so that the development of the Site shall be in accordance with the provisions of this Agreement, the Redevelopment Plan, as they may be amended at Redeveloper's request, and Applicable Law.

Section 3.2.6 **First Source Employment**. Redeveloper covenants it shall make good faith efforts to employ, and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ qualified residents of the City in the construction of the Redevelopment Project. In addition, consistent with market wages and to the greatest extent feasible, the Redeveloper shall make good faith efforts that qualified residents of the City are employed in the operation of the Redevelopment Project. The Redeveloper shall cooperate with SARA: (i) in developing a plan to coordinate training programs and employment recruitment efforts for qualified City residents, (ii) to recruit qualified City residents for all employment opportunities in connection with the Redevelopment Project, and (iii) to cause its contractors and subcontractors, when first engaged for the Redevelopment Project to provide an initial hire report concerning its training, recruitment and employment efforts. Inclusion of this requirement in Redeveloper's contract and subcontract agreements shall fully satisfy this obligation of the Redeveloper under this Section 3.2.6.

Section 3.2.7 Compliance with this Agreement. Redeveloper shall ensure that all consultants, professionals, employees, agents, or contractors engaged by Redeveloper, or by Redeveloper's subcontractors, shall have the skill and judgment necessary to implement the Redevelopment Project in compliance with the terms and conditions of this Agreement.

Section 3.3 Obligations and Duties of SARA.

Section 3.3.1 Cooperation. SARA shall cooperate with Redeveloper so as to enable Redeveloper to carry out its obligations and responsibilities under this Agreement. Such cooperation shall include, but shall not be limited to, the following:

(a) Providing all plans and documentation currently and previously affecting the Site and within the control of SARA, including, but not limited to: (i) the Redevelopment Plan and all amendments thereto; (ii) documents related to the designation of the Site; (iii) documents previously provided to SARA during prior attempts to develop the Site; (iv) documents relating to any prior or ongoing litigation involving the Site, or condemnation of properties in the vicinity of the Site, including without limitation pleadings and orders; (v) environmental reports concerning the Site (vi) title searches; and (vii) any other relevant documents. SARA shall have a continuing obligation to provide, upon request, such materials and disclose all relevant information;

(b) Expeditious review of all plans and materials and consent to any applications for Approvals, if required. If SARA's consent is required for the submission of any plans or materials to the Planning Board or any other Governmental Body, SARA shall review the plans and materials and use its best efforts to approve or provide reasonable explanations for denial of approval as quickly as possible, but no later than thirty (30) Days from the date of receipt of the submission materials. SARA shall have thirty (30) Days to review and comment on any resubmitted submission plans or materials, but shall use its best efforts to review and comment in less than thirty (30) Days. In any event, SARA's failure to approve or deny consent for any Redeveloper submittal within thirty (30) Days of Redeveloper's initial submittal shall constitute approval of such submission plans and materials;

(c) Assistance in filing for, or at Redeveloper's election, applying on behalf of SARA for tax incentives, tax credits, grants, and other financial programs offered by any Governmental Body, with the proceeds being contributed to Redeveloper to further the Redevelopment Project;

(d) Assistance in seeking financial assistance (consisting of grants and other public funds) for the Redevelopment Project, including financial assistance for remediation of the Site. Such funding shall be applied for by SARA as soon as possible after written notification from Redeveloper. SARA shall, to the extent permitted by law, allow Redeveloper to perform and proceed with remediation as funding is secured and received;

(e) Serving, at Redeveloper's election, as the co-applicant for any applications for Approvals;

(f) Diligent defense, at Redeveloper's expense, of any legal challenge or appeal related to the Redevelopment Project. If SARA determines, in its sole judgment, that a motion for intervention on behalf of Redeveloper is legally sound, SARA shall support such a motion and must provide prompt updates to Redeveloper as to the status of the litigation.

(g) The exercise of such other actions pursuant to the Applicable Law as may be necessary or convenient to carry out the purpose and intent of this Agreement, and in response to other reasonable Redeveloper requests.

Section 3.4 <u>Schedule</u>. Redeveloper shall adhere to all deadlines in the Schedule subject only to relief resulting from the occurrence of an event of Force Majeure, an Event of Default by SARA and such other relief as may be provided for in Article IX. In addition, Redeveloper's obligation to adhere to deadlines for the development and construction of Public Improvements is limited to the availability of public funding, as set forth in Section 3.5. If Redeveloper fails to meet any deadline or determines that it will fail to meet any deadline, Redeveloper shall promptly provide written notice to SARA stating (a) the reason for the failure to complete the applicable task in accordance with the Schedule, (b) Redeveloper's proposed method for correcting such failure, (c) Redeveloper's schedule for completing such task, (d) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant deadlines and (d) a revised Schedule. Following receipt of such written notice, SARA may approve such revised Schedule. Notwithstanding anything to the contrary, Redeveloper shall be relieved from its obligation to adhere to any deadlines relating to any Phase governed by a Subredevelopment Agreement.

Section 3.5 <u>Infrastructure, Public Improvements and Off-Site Improvements</u>. Redeveloper shall design and construct the infrastructure, Public Improvements and any Off-Site Improvements required by the Planning Board or required by any other Governmental Body as a condition to any Approval, in a good and workmanlike manner and in accordance with all Applicable Law, subject to Redeveloper's receipt of any fees or assessments owed by any Subredeveloper with respect to such infrastructure, Public Improvements or Off-Site Improvements. Redeveloper acknowledges that the infrastructure Improvements may include, but are not limited to, roads, electric power transmission lines, sewer transmission conduits or pipes, pumping station, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities. Redeveloper agrees that it is its sole responsibility to undertake and pay for the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and Improvements and easements therefor, in order to Complete the Redevelopment Project as provided by this Agreement. Nothing contained herein shall be construed as a waiver by Redeveloper of any rights which it may have under Applicable Law to request and obtain from the applicable utility authorities (other than the City) fair share contributions and/or credits as a result of Redeveloper bearing the cost of such infrastructure Improvements. Redeveloper shall maintain all Public Improvements and, in the case of roads, keep the same free of all snow and other debris so as to give access to fire and other emergency and police vehicles, until such Public Improvements are dedicated to the City. Any lands to be dedicated shall be deeded to the City by Redeveloper free and clear of all liens, easements and deed restrictions. The City and Redeveloper shall enter into an agreement in connection with any dedication of such Public Improvements or land; which agreement shall address the responsibilities for the maintenance of such Public Improvements or land following such dedication. Redeveloper and the City shall execute and record the Public Improvements Easement in connection with the development and construction of the Phases of the Redevelopment Project impacted by the Waterfront Walkway. Notwithstanding anything contained in this Agreement to the contrary, the Redeveloper's obligation to design and construct the Public Improvements is limited to, and contingent upon, its ability to obtain public funding for same, including, without limitation, the financial assistance outlined in Section 4.2 herein.

Section 3.5.1 Public Safety. The Parties acknowledge that the size of the Redevelopment Project will impact the ability of the City's volunteer fire departments to provide fire protection to the Redevelopment Project. Accordingly, prior to the Redeveloper's receipt of a Certificate of Completion for the One Thousandth Two Hundred and Fiftieth (1250^{th}) residential unit, Redeveloper shall donate Five Hundred Thousand Dollars ($500,000) to the City for public safety improvements.

Section 3.5.2. Enhancement of City Business District. The Redeveloper agrees not to permit any commercial or retail uses on Block 161.02, Lots 6.03 and 6.04 (other than Accessory Commercial Uses). The Redeveloper and the City shall develop a plan for the integration (connection) of the Redevelopment Project with/to the Broadway business district. Such plan shall address among other things, infrastructure Improvements to enhance safe pedestrian access to/from the Redevelopment Project and Broadway, marketing of Broadway businesses to the residents of the Redevelopment Project and Improvements to Broadway to enhance and improve such business district.

Section 3.5.3 NJ Transit Parking Lot. The Parties shall work cooperatively with NJ Transit to have the NJ Transit lot adjacent to the Redevelopment Project and the South Amboy Train Station improved (including paving, curbing and striping) for the benefit of the City and the Redevelopment Project.

Section 3.5.4 **Ferry Terminal.** The Parties acknowledge that the success of the Redevelopment Project will be significantly enhanced by the construction of a ferry terminal as set forth on the Concept Plans. The Parties shall work cooperatively to develop such a ferry terminal, including Redeveloper reasonably cooperating with the City in securing reasonable access for the City to sewer and water mains, to the extent required in connection with the construction of the ferry terminal, provided that any such access does not unreasonably interfere with the Redevelopment Project or cause Redeveloper to incur any material, additional cost.

Section 3.5.5 **Sewer Capacity.** The Parties acknowledge that the City and Redeveloper have entered into the Redeveloper Sewer Agreement, and the Borough of Sayreville and the City have entered into the Sayreville Sewer Agreement, to acquire additional sewer capacity for the Redevelopment Project, as required by the Original Agreement .

Section 3.5.6 **Acquisition of SARA/City Parcels.** The Parties acknowledge that Redeveloper acquired the SARA/City Parcels as required by the Original Agreement.

Section 3.5.7 **Exchange of Land.** The Parties acknowledge that the exchange of land referenced on the prior Concept Plan to the Original Agreement as "Land Swap Area No. 1" and "Land Swap Area No. 2" are no longer contemplated to occur, that the Redevelopment Project can be constructed without such exchange, and that the Concept Plan to this Agreement has been revised accordingly.

Section 3.5.8 **Transfer of Donated Parcel.** The Parties acknowledge that SARA purchased and then conveyed to Redeveloper the Donated Parcel as referenced by the Original Agreement.

Section 3.6 **Traffic and Traffic Improvements.** Redeveloper shall comply with the conditions of all Approvals with regard to traffic both during construction and thereafter, provided that Redeveloper retains the right to contest or appeal such conditions in an appropriate forum. Without limiting the foregoing, Redeveloper agrees to work closely with the City and to comply with all City ordinances to mitigate the impact of construction vehicles, traffic around the Site during construction and related concerns, and to use commercially reasonable efforts to minimize the traffic effects of the Redevelopment Project upon the surrounding neighborhood.

Section 3.7 **Environmental.**

(a) Redeveloper shall retain a Licensed Site Remediation Professional ("**LSRP**") to prepare a remedial action work plan for the Site. Redeveloper shall provide SARA with a draft of the remedial action work plan and allow SARA fifteen (15) Business Days for the opportunity to review and provide its comment on the draft remedial action work plan prior to finalization. The Parties acknowledge that the LSRP retains sole discretion on accepting comments and finalizing the remedial action work plan. The Parties also acknowledge that separate remedial action work plans may be prepared for different properties within the Site, which may be prepared at different times during the development of the Redevelopment Project. Only to the extent Redeveloper determines to undertake the acquisition, remediation and redevelopment of the Wische Parcels after completing its Site Due Diligence Activities, shall this provision apply to the Wische Parcels.

(b) Redeveloper shall be responsible to ensure that the portion of the Site it Controls is in compliance with Environmental Laws.

(c) Notwithstanding any of the foregoing, the Parties acknowledge that certain properties within the Site may be remediated by other parties using other LSRPs, which remedial activities may be beyond the control of the Redeveloper. The Redeveloper shall endeavor to coordinate the Redevelopment Project with those remedial activities.

Section 3.8 **Inspection Fees.** Redeveloper shall pay all inspection fee deposits in accordance with the MLUL and Applicable Law.

Section 3.9 **Work Site Safety.** Redeveloper shall take all reasonable precautions for the safety of all persons on the work site to prevent accidents or injuries.

Section 3.10 **Neighborhood Impacts.** Redeveloper acknowledges that the construction of the Redevelopment Project may have certain impacts on the neighborhoods in the vicinity of the Redevelopment Project. Although it is anticipated that the Redevelopment Project 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 for a short time thereafter. Therefore, Redeveloper shall take reasonable steps in order to minimize any material negative effects that the construction of the Redevelopment Project may produce. As a result, SARA and Redeveloper agree herein to address the reasonable concerns of the surrounding neighborhoods in order to assure the citizens of the City that reside in those neighborhoods that the Redevelopment Project will be undertaken with minimum inconvenience as is practicable.

Section 3.11 **Construction Traffic, Illumination, Noise and Pollution.** Redeveloper shall take reasonable steps to minimize the construction traffic and the passage of excessive or unwarranted illumination, noise or pollution into the surrounding community. Redeveloper shall take reasonable measures to ensure that the Improvements on the perimeter of the Site shall not be damaged or materially disturbed. Redeveloper commits to follow all applicable construction laws, regulations and standards in the industry to address these concerns and furthermore commits to having a program in place, prior to the Commencement of Construction, to reasonably address such concerns.

Section 3.12 **Parking During Construction.** Redeveloper acknowledges that sufficient on-site parking may not be available for construction workers during construction of the Redevelopment Project and agrees that Redeveloper and its subcontractors will be responsible, at their own cost, for making arrangements for off-site parking to the extent required. Notwithstanding the foregoing, SARA and the City shall cooperate with Redeveloper in its efforts to provide parking for construction workers during construction of the Redevelopment Project including, if available, off Site.

Section 3.13 **Rodent, Insect and Animal Control.** Redeveloper shall take reasonable steps to minimize and control the migration of rodents, insects, or other animals from the portion of the Site it Controls during the construction of the Redevelopment Project. Redeveloper shall undertake to provide controls in accordance with all Applicable Law and other construction standards such that the issue of rodent, insect and animal control is reasonably addressed. Redeveloper shall coordinate this effort with the City's Department of Health.

Section 3.14 **Project Employment**. In constructing the Redevelopment Project, Redeveloper agrees to make best efforts to maintain an "open shop" by accepting bids from all types of qualified subcontractors.

Section 3.15 **Certificates of Completion.** The Completion of the Redevelopment Project, or any part or Phase thereof, shall be evidenced, at Redeveloper's request, by a Certificate of Completion in recordable form, issued by SARA. The Certificate of Completion for the Redevelopment Project or Phase shall state that SARA accepts the terms of a written certification of a duly authorized officer of Redeveloper stating that (a) the Redevelopment Project or applicable Phase has been Completed and all labor, services, materials and supplies used in connection therewith have been paid for (or, if disputed, bonded for), and (b) Redeveloper has materially performed all of its applicable duties and obligations under this Agreement with respect to the Redevelopment Project or Phase to which the Certificate of Completion pertains.

The Certificate of Completion shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to Redeveloper's obligation to construct the Redevelopment Project or applicable Phase. Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Site, or applicable portion thereof, was determined to be an area in need of redevelopment shall be deemed to no longer exist and the land and improvements within the Site, or applicable portion thereof, shall no longer be subject to eminent domain as a result of those determinations.

If SARA determines that Redeveloper is not entitled to a requested Certificate of Completion, SARA shall, within twenty (20) Business Days of receiving Redeveloper's request for the Certificate, provide Redeveloper with a written statement of the reasons SARA refused or failed to furnish a Certificate of Completion. Upon resolution of the open issues to the reasonable satisfaction of SARA, Redeveloper shall be entitled to receive the Certificate of Completion.

ARTICLE IV

REDEVELOPER OBLIGATION TO PAY SARA/CITY FEES AND COSTS

Section 4.1 Payments to SARA. The Parties acknowledge that an undertaking of the size and density of the Redevelopment Project will have a material impact on SARA. To the extent permitted by N.J.S.A. 40A:12A-8.f, in order to assist SARA in its efforts to address such impact, particularly as it relates to the period of time from the Effective Date through the issuance of a Certificate of Completion for the Redevelopment Project, the Redeveloper has agreed to make certain payments to defray SARA's costs related to the Redevelopment Project. Specifically, Redeveloper shall pay SARA Ten Thousand Dollars ($10,000) per month, payable on the first Business Day of each month following January 1, 2018, until the issuance of the final Certificate of Completion for development of the portion of the Site consisting of Block 161.02, Lots 6.03 and 6.04; provided, however, that Redeveloper's monthly fee pursuant to this Section 4.1 shall be automatically reduced upon the issuance of any Certificate of Completion for any Phase or subphase of the Redevelopment Project by an amount equal to (i) $10,000, multiplied by (ii) a fraction, with a numerator equal to the number of residential units in such Phase or subphase for which such Certificate of Completion has been obtained, and a denominator of 1,750. By way of example, if a Certificate of Completion is issued for a Phase or subphase containing 175 residential units, then the monthly fee payable by Redeveloper pursuant to this Section 4.1 shall be automatically reduced to an amount equal to $9,000 per month. Notwithstanding the above, Redeveloper shall not be required to make any payments pursuant to this Section 4.1 during a Force Majeure event or an Event of Default by SARA or the City or both. In addition, Redeveloper shall pay to SARA one-time fees of (A) Five Thousand Dollars ($5,000) for each for-sale market-rate residential unit at the time of the issuance of a Certificate of Occupancy for each such unit, and (B) Two Thousand Five Hundred Dollars ($2,500) for each rental market-rate residential unit at the time of the issuance of a Certificate of Occupancy for each such unit; provided, however, that Redeveloper shall not be responsible for any such per unit payments with respect to any Phase governed by a Subredevelopment Agreement. In the event Redeveloper converts any rental units to for-sale, Redeveloper shall pay to SARA, at the time of sale of such units, Two Thousand Five Hundred Dollars ($2,500) (representing the difference between the Five Thousand Dollar ($5,000) per unit fee for for-sale units and the Two Thousand Five Hundred Dollar ($2,500) per unit fee for rental units). SARA and the City acknowledge that there are no outstanding fees owed by Redeveloper to SARA or the City pursuant to the Original Agreement.

Section 4.2 PILOTS/RABs/ERGGs. Notwithstanding Redeveloper's substantial private investment and effort as set forth in this Agreement, the Site may not be developable pursuant hereto by the instrumentality of private capital alone, and, therefore, a PILOT, ERGG, and/or other funding support may be necessary in order to influence the locational decisions of the probable occupants of the Redevelopment Project. Redeveloper may apply to the City and/or such other Governmental Bodies as applicable for financial assistance via Redevelopment Area Bonds ("**RABs**") and/or Economic Redevelopment and Growth Grants (**"ERGGs**"), as codified by the

Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. ("**RAB Law**"), the New Jersey Economic Stimulus Act of 2009, N.J.S.A. 52:27D-489(a) et seq. ("**ERGG Law**") and any other Applicable Law, or via similar mechanisms under Applicable Law. If appropriate and necessary, SARA shall work with Redeveloper to support its requests for PILOTS, RABs, and/or ERGGs if SARA determines, in its sole and absolute discretion, that such requests are reasonable and necessary. Nothing herein shall obligate the City, in its sole and absolute discretion, to provide any financial assistance.

Section 4.3 **Payment of SARA/City Fees and Expenses**. Generally, the feasibility of development of real property is innately speculative in nature, thus giving rise to both economic risk and the potential for reward. SARA and the City have deemed it advisable for themselves and the community to avoid economic risk by transferring same to Redeveloper. As an incentive to SARA and the City to enter into this Agreement, Redeveloper hereby acknowledges and agrees that neither SARA nor the City shall be obligated to incur any fees and expenses in connection with the implementation of this Agreement, other than that there shall be no obligation to reimburse SARA or the City directly for costs incurred for either entity's in house employees, which costs are intended to be reimbursed through the payment of the SARA Fees provided for pursuant to Section 4.1. Redeveloper agrees that it shall make timely payment or reimbursement to SARA and/or the City for all reasonable fees and expenses incurred for outside professionals engaged by SARA and/or the City in connection with the Redevelopment Project and this Agreement including costs of the Planning Board Planner to review the Redevelopment Plan ("**SARA/City Costs**"). Such reasonable fees and expenses shall include, but are not limited to, engineer, planner, consultant, and attorney fees and expenses. Neither SARA nor the City shall be required to expend any of its own funds for any purpose or to meet any obligation under this Agreement.

Section 4.3.1 **Escrow for SARA/City Costs.** Redeveloper has established an escrow account (the "**Escrow Account**"), having an initial balance of one hundred thousand dollars ($100,000) for the SARA/City Costs. Funds in the Escrow Account shall be held in escrow and drawn down by SARA, on behalf of itself or the City, to be applied to the payment or reimbursement of the SARA/City Costs as provided in this Agreement. SARA shall provide a monthly statement of account with regard to the Escrow Account with copies of applicable invoices. Within ten (10) Days of notice that the balance in the Escrow Account has been diminished to Twenty-Five Thousand Dollars ($25,000), Redeveloper shall immediately provide to SARA for deposit such additional funds as are necessary to increase the balance in the Escrow Account to One Hundred Thousand Dollars ($100,000). Any remaining balance in the Escrow Account shall be returned to Redeveloper after the Completion of the Redevelopment Project. All billings shall be submitted to Redeveloper, for approval, prior to payment. Redeveloper shall have ten (10) Days to object to any invoice. Invoices shall be deemed approved ten (10) Days after receipt of the same by Redeveloper unless Redeveloper objects. If Redeveloper objects to any invoice, payment from the Escrow Account shall be stayed until the dispute is resolved. The amount deposited herein shall be in addition to any Acquisition Costs.

ARTICLE V

AFFORDABLE HOUSING

Section 5.1 Affordable Housing Requirement. The Redeveloper agrees to cooperate with the City in meeting the affordable housing requirement that will be generated by the Redevelopment Project in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 to 329, as amended and supplemented (the "**Fair Housing Act**") and the prevailing regulations promulgated thereunder as follows (the "**Affordable Housing Requirement**") by undertaking the following:

(a) Prior to the receipt of a Certificate of Occupancy for the Redevelopment Project, or any Phase thereof, Redeveloper shall pay a fee to the City equal to Forty Thousand Dollars ($40,000) multiplied by a number equal to Five Percent (5%) of the market-rate residential units in such Phase (the "**COAH Fee**"). Notwithstanding anything to the contrary, Redeveloper shall not be obligated to pay any COAH Fee with respect to any Phase constructed and developed by a Subredeveloper pursuant to a Subredevelopment Agreement. By way of example, the COAH Fee for a Phase that includes Three Hundred (300) market-rate residential units shall be Six Hundred Thousand Dollars ($600,000) (300 x .05 x $40,000). Such amount shall be deposited by the City in an affordable housing trust fund to be used in accordance with the Fair Housing Act; and

(b) The Redeveloper shall provide a number of residential units restricted to low and moderate income households (as such terms are defined and used in the Fair Housing Act) (the "**COAH Units**") within the City equal to Five Percent (5%) of the residential market units receiving a final Certificate of Occupancy. Notwithstanding the above, the City shall not issue Certificates of Occupancy for more than One Thousand Five Hundred (1,500) market-rate residential units on any portion of the Site until the Redeveloper and/or any Subredevelopers have provided Eighty-Eight (88) COAH Units in the City. The City shall work cooperatively with the Redeveloper to identify sites for the rehabilitation of existing residential buildings or construction of new residential buildings for COAH Units within the City, including on the Site.

The Redeveloper shall have no further affordable housing obligations except as set forth above.

ARTICLE VI

ACQUISITION OF PROPERTY

Section 6.1 Acquisition Procedures. Redeveloper shall exercise commercially reasonable efforts to negotiate a purchase contract in good faith with each non-public owner of property constituting the Site. If Redeveloper is unable to enter into a purchase contract with any such owner of any portion of the Site (not owned by the City), after exercising commercially reasonable efforts in good faith negotiations and making a written offer to such property owner, Redeveloper may provide written notice (the "**Acquisition Notice**") to SARA requesting that SARA acquire the specified property located within the Site (the "**Acquisition Property**"). The Acquisition Notice must identify the Acquisition Property, identify the amount of the purchase price(s) offered to and rejected by the property owner, set forth the efforts made to voluntarily acquire the Acquisition Property, and state that the property cannot be acquired through private negotiations. With the aforementioned Acquisition Notice, Redeveloper shall also provide to SARA copies of any title work, appraisals or surveys for the Acquisition Property, including environmental reports, if any, as well as funds sufficient to undertake the appraisal described in Section 6.2.

Section 6.2 Appraisal of Acquisition Property. Within thirty (30) Days of the delivery of the Acquisition Notice, SARA shall undertake an appraisal, by an appraiser approved by both Parties, of the fair market value of the Acquisition Property in accordance with the Eminent Domain Act. Upon completion of the appraisal, SARA shall submit to Redeveloper a copy of the appraisal, at which time Redeveloper shall have thirty (30) Days to review and comment on the appraisal and provide notice to SARA as to whether it wishes SARA to proceed with the acquisition (**"Notice to Proceed"**) or terminate the acquisition process (**"Notice Not to Proceed"**). In the event that Redeveloper determines that acquisition of the Acquisition Property is undesirable and issues Notice Not to Proceed, neither Party shall have any further obligations with respect to the appraised property and Redeveloper's designation as the redeveloper of that property shall automatically terminate. Redeveloper may elect to proceed with the redevelopment of the remainder of the Site, undertaking such redesign of the Redevelopment Project as may be necessary or desirable.

Section 6.3 Condemnation Procedure. Within forty-five (45) Days of Redeveloper's Notice to Proceed, and compliance with Section 6.2, SARA shall submit an offer for purchase to the property owner ("**Offer**") for an amount consistent with the approved appraisal ("**Offer Price**") in accordance with the Eminent Domain Act. If SARA makes an Offer, and the property owner rejects the Offer or fails to respond within fourteen (14) Days or such reasonable time as may be required by law, SARA shall commence an action for condemnation, within thirty (30) Days of the property owner's rejection or failure to respond, pursuant to the Eminent Domain Act. SARA shall retain legal counsel to provide professional services in any condemnation proceedings arising out of this Agreement. SARA may also retain surveyors and other professionals reasonably necessary in a condemnation proceeding. SARA shall provide Redeveloper with periodic updates as to the status of the condemnation proceedings.

Section 6.4 **Acquisition Costs**. The fees and expenses of any kind associated with the acquisition of the Acquisition Property by SARA through eminent domain or good faith negotiations precedent to eminent domain ("**Acquisition Costs**"), may include without limitation: (a) the price paid or to be paid to the property owner which shall be the just compensation value determined by the condemnation process either in bona-fide negotiations with the property owner or as a result of the proceedings before the condemnation commissioners or the court; (b) the amount paid in compromise or settlement of any claim for just compensation (as to which SARA agrees it shall not settle or compromise without Redeveloper's consent); (c) all reasonable fees and expenses incurred in complying with the Redevelopment Law and the Eminent Domain Act, including, but not limited to, professional services, expert fees, inspections, appraisals, environmental investigations, court deposits (required by N.J.S.A. 20:3-18) and court costs and fees associated with bona-fide negotiations, commissioner hearings, court proceedings and challenges to the acquisitions; (d) all reasonable costs and fees incurred in complying with the Relocation Assistance Act N.J.S.A. 20:4-1 et seq. and the Relocation Assistance Law N.J.S.A. 52:31B-1 et seq., including, but not limited to the Relocation Assistance paid to the residents and businesses displaced by the Redevelopment Project, the fees of the relocation consultant and all costs and fees of Governmental Bodies overseeing the relocation process; and (e) reasonable costs associated with title insurance. Prior to SARA making the Offer, Redeveloper shall deposit with SARA an amount equal to one hundred percent (100%) of the Offer Price established pursuant to Section 6.3, together with one hundred percent (100%) of the difference between the Offer Price and the estimated Acquisition Costs, which shall be held in separate escrow accounts by SARA. In the event any negotiations, report of condemnation commissioners or final order of a court of competent jurisdiction establishes a value for the Acquisition Property that exceeds the funds deposited as the Offer Price, Redeveloper shall either, within ten (10) Days of SARA's demand, deposit with SARA the excess amount or, to the extent permitted by law, terminate all efforts to acquire the Acquisition Property. SARA shall provide copies of all invoices for Acquisition Costs to Redeveloper. Redeveloper shall have the ability to review and dispute such invoices. Redeveloper shall be responsible for all costs associated with the prosecution of any condemnation action including the defense of any challenge to SARA's power to condemn property. In the event that there is a determination for any reason that the condemnation cannot proceed, the Redeveloper shall not make any claims against the City or SARA with respect thereto, and the Redeveloper shall be relieved of any obligation to redevelop any property that cannot be acquired through eminent domain

Section 6.5 **Cost Recovery**. The Parties acknowledge that, pursuant to the Acquisition Notice, a property may be condemned that is environmentally contaminated and for which the owner, and/or other parties, may be responsible for remediation. In such event, SARA shall preserve the right of either SARA or Redeveloper to seek cost recovery from the prior owner and other responsible parties. Such reservation of rights shall be established in the condemnation complaint and the Declaration of Taking. In the event SARA actually recovers sums from responsible parties or achieves savings by compelling a responsible party to perform the remediation, such sums or savings shall be the property of Redeveloper. SARA shall object to any application to withdraw funds on deposit with the court by the prior property owner if the application does not leave sufficient funds on deposit to cover the remediation costs.

Section 6.6 Title.

(a) It is agreed that SARA shall acquire fee simple absolute title to each Acquisition Property that is to be acquired by condemnation or negotiation, respectively, which title shall be good and marketable and insurable at regular rates by a reputable title insurance company selected by Redeveloper and licensed to do business in the State of New Jersey ("**Title Insurer**"), subject only to such exceptions as may be acceptable to Redeveloper. If Redeveloper has obtained any title insurance commitments with respect to the Acquisition Properties (each a **"Title Insurance Commitment"),** Redeveloper shall provide them to SARA. SARA shall provide to Redeveloper any Title Insurance Commitments it may obtain on Acquisition Properties for which Redeveloper has not already obtained such commitments. SARA shall promptly file and record in the Office of the Clerk of Middlesex County the deed to each parcel acquired by purchase agreement and a Declaration of Taking for each parcel acquired by condemnation proceedings.

(b) Notwithstanding the fact that the filing of the Declaration of Taking will clear title to a property, Redeveloper shall inform SARA in writing of any objections to title ("**Title Objections**") as to any property within thirty (30) Days of receipt of a Title Insurance Commitment. SARA and Redeveloper shall work in a cooperative manner to resolve any Title Objections to the satisfaction of Title Insurer such that Title Insurer agrees to modify its Title Insurance Commitment to omit or provide affirmative insurance with respect to the Title Objection in question. Unless Redeveloper can acquire good and marketable title through negotiations pursuant to contracts with private sellers, SARA shall commence and prosecute eminent domain or other proceedings to cure any Title Objection.

Section 6.7 Conveyance of Acquisition Property. Simultaneously with the acquisition by SARA of the Acquisition Property, SARA shall convey, and Redeveloper shall accept, title by bargain and sale deed with covenants against grantor's acts, to such Acquisition Property., SARA agrees to refund any Acquisition Costs on deposit with SARA that exceed the actual Acquisition Costs following transfer of such Acquisition Property to Redeveloper and acknowledgement, as applicable, that there are no Acquisition Costs due and owing.

Section 6.8 Riparian Rights. If the Acquisition Property that is conveyed to Redeveloper by SARA is subject to any ownership by, or any ownership claims of, the State based upon the fact that areas thereof are now or formerly were flowed by tidal waters (the "**Riparian Lands**"), Redeveloper shall promptly and diligently seek to acquire title or a long-term leasehold of the license interest to such Riparian Lands from the State in accordance with Applicable Law. SARA shall exercise the power of eminent domain to clear any private rights in the Riparian Lands in accordance with Section 6.6(b).

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 Redeveloper's Representations and Warranties. Redeveloper hereby represents and warrants the following to SARA for the purpose of inducing SARA to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date:

Section 7.1.1 Organization. Redeveloper is a limited liability company, duly formed, validly existing and 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 Agreement.

Section 7.1.2 Authority. Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

Section 7.1.3 Authorization; No Violation. The execution, delivery and performance by Redeveloper of this Agreement have been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of Redeveloper or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which Redeveloper is a party or by which Redeveloper may be bound or affected.

Section 7.1.4 Enforceability. This Agreement is duly executed by Redeveloper, and is valid and legally binding upon Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which Redeveloper is a party.

Section 7.1.5 Ownership Structure. The ownership and management structure of Redeveloper is set forth in **Exhibit F** and is true as of the Effective Date. Redeveloper shall, upon any change in the ownership and management structure set forth in **Exhibit F,** furnish SARA with notice of such change. Such notice will amend **Exhibit F** accordingly and any provision of this Agreement relating to such **Exhibit F** shall apply to **Exhibit F** as amended.

Section 7.1.6 No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which Redeveloper is a party or is otherwise subject.

Section 7.1.7 Appointment of Receiver. No receiver, liquidator, custodian or trustee of Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to Redeveloper shall have been filed as of the

Effective Date.

Section 7.1.8 <u>Adjudication of Bankruptcy</u>. No adjudication of bankruptcy of Redeveloper or a filing for voluntary bankruptcy by Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statue that is applicable to Redeveloper shall have been filed.

Section 7.1.9 <u>No Litigation</u>. There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (a) questions the authority of Redeveloper to enter into this Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Agreement; or (b) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement.

Section 7.1.10 <u>Accuracy of Submissions</u>. To the best of Redeveloper's knowledge, information and statements included in any information submitted by Redeveloper to SARA and its agents, including but not limited to McManimon, Scotland & Baumann, LLC, are true and correct in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper are a material factor in the decision of SARA to enter into this Agreement.

Section 7.1.11 <u>No Violation of Laws</u>. Redeveloper has received no notice as of the Effective Date asserting any noncompliance in any material respect by Redeveloper with applicable statutes, rules and regulations of the United States, the State or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Redeveloper's ability to perform its obligations in connection with this Agreement. Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

Section 7.1.12 <u>Absence of Criminal Background</u>. Neither Redeveloper, nor any owner of Redeveloper (a) has been convicted in a criminal proceeding or is a named subject in a pending criminal proceeding (excluding traffic violations or other minor offenses), or (b) to the best of Redeveloper's knowledge and belief is a target of a criminal investigation.

Section 7.1.13 <u>Certificate of Formation; Certificate of Good Standing</u>. Redeveloper's certificate of formation and certificate of good standing, duly certified by the Secretary of State of the state of Redeveloper's formation, are in full force and effect.

Section 7.2 <u>SARA and City Representations and Warranties</u>. SARA and the City, as applicable, hereby represent and warrant the following to Redeveloper for the purpose of inducing Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date:

Section 7.2.1 Organization.

(a) SARA is a public body corporate and politic and a political subdivision of the State. SARA has all requisite power and authority to enter into this Agreement.

(b) The City is a public body corporate and politic and a political subdivision of the State. The City has all requisite power and authority to enter into this Agreement.

Section 7.2.2 Authority.

(a) SARA has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which SARA is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) The City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the City is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

Section 7.2.3 No Conflict.

(a) This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which SARA is a party or is otherwise subject.

(b) This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject.

Section 7.2.4 Enforceability.

(a) This Agreement is duly executed by SARA and is valid and legally binding upon SARA and enforceable in accordance with its terms on the basis of Applicable Law presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which SARA is a party.

(b) This Agreement is duly executed by the City and is valid and legally binding upon the City and enforceable in accordance with its terms on the basis of Applicable Law presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the City is a party.

Section 7.2.5 Valid and Binding Obligations.

(a) The Person executing this Agreement on behalf of SARA has been duly authorized and empowered and this Agreement has been duly executed and delivered by SARA and constitutes the valid and binding obligation of SARA except to the extent that the enforcement thereof may be limited by the Creditors' Rights Limitations.

(b) The Person executing this Agreement on behalf of the City has been duly authorized and empowered and this Agreement has been duly executed and delivered by the City and constitutes the valid and binding obligation of the City except to the extent that the enforcement thereof may be limited by the Creditors' Rights Limitations.

Section 7.2.6 Litigation.

(a) No suit is pending against or affects SARA which could have a material adverse effect upon SARA's performance under this Agreement or the financial condition or business of SARA. There are no outstanding judgments against SARA that would have a material adverse affect upon SARA or which would materially impair or limit the ability of SARA to enter into or carry out the transactions contemplated by this Agreement.

(a) No suit is pending against or affects the City which could have a material adverse effect upon the City's performance under this Agreement or the financial condition or business of the City. There are no outstanding judgments against SARA that would have a material adverse affect upon the City or which would materially impair or limit the ability of the City to enter into or carry out the transactions contemplated by this Agreement.

Section 7.2.7 No Violation of Laws.

(a) SARA has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by SARA with applicable statutes, rules and regulations of the United States of America, the State or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on SARA's ability to perform its obligations in connection with this Agreement. SARA is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

(a) The City has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the City with applicable statutes, rules and regulations of the United States of America, the State or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the City's ability to perform its obligations in connection with this Agreement. The City is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

Section 7.2.8 Cooperation. SARA and the City shall act with diligence and in a cooperative manner to assist in the redevelopment of the Site.

ARTICLE VIII

REDEVELOPER AND SARA COVENANTS; DECLARATION OF COVENANTS AND RESTRICTIONS

Section 8.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

Section 8.1.1 Compliance with Uses in Redevelopment Plan. Pursuant to N.J.S.A. 40A:12A-9, Redeveloper shall construct only the uses established in the Redevelopment Plan, as amended.

Section 8.1.2 Commencement. Pursuant to N.J.S.A. 40A:12A-9, Redeveloper shall Commence the Redevelopment Project in accordance with the terms of this Agreement.

Section 8.1.3 Conditions Deemed to No Longer Exist. Pursuant to N.J.S.A. 40A:12A-9, upon completion of the Redevelopment Project, or any part thereof for which a Certificate of Completion is issued, the conditions determined to have existed at the time the relevant portion of the Site was determined to be in need of redevelopment shall be deemed to no longer exist, and that portion of the Site and the Redevelopment Project or applicable Phase shall no longer be subject to eminent domain based on those determinations.

Section 8.1.4 Prohibition Against Transfer. Pursuant to N.J.S.A. 40A:12A-9, except as permitted under Article 10 of this Agreement, until such time as a Certificate of Completion is issued for a particular Phase, at which time any prohibitions against Transfer shall no longer apply, Redeveloper shall not sell, lease or otherwise Transfer the Site, the Redevelopment Project, any Phase, or any part thereof, without the consent of SARA.

Section 8.1.5 Non-Discrimination. Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or sex in the sale, lease, sublease, Transfer, use, occupancy, tenure or enjoyment of the portion of the Site it Controls nor shall Redeveloper itself, or any Affiliate claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in the portion of the Site it Controls.

Section 8.1.6 Redeveloper Covenants. The covenants and undertakings set forth in Section 8.1.1 through Section 8.1.5, as well as the Transfer provisions of Article 10, shall be referred to herein as the "Redeveloper Covenants."

Section 8.2 Declaration of Covenants and Restrictions. Redeveloper agrees to record a Declaration of Covenants and Restrictions (the "**Declaration**"), with respect to all lands included in the portion of the Site it Controls, and which is subject to this Redevelopment Agreement as and when it establishes such Control, imposing upon said lands, the Redeveloper Covenants.

Section 8.3 Effect and Duration of Redeveloper Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the Redeveloper Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, SARA, its successors and assigns and any successor in interest to the Site, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Site or any part thereof. Notwithstanding the foregoing, It is further intended and agreed that the Redeveloper Covenants shall terminate upon Completion of the Redevelopment Project (or any Phase). After Completion of the Redevelopment Project (or any Phase), the Site and the Redevelopment Project (or applicable Phase or portion thereof) shall cease to be governed by the terms of this Agreement and the Redeveloper Covenants, and a Certificate of Completion shall be issued by SARA and recorded on the records maintained by the Recorder of Deeds in the Office of the Middlesex County Clerk. The Redeveloper Covenants shall be binding on Redeveloper itself, each owner and successor in interest to the Site, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Site, the buildings and structures thereon or any part thereof.

Section 8.4 SARA's Covenants. SARA covenants and agrees that it shall act with diligence and cooperate with the Redeveloper in facilitating the Redevelopment Project, including but not limited to the cooperation required by Section 3.3.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default. Any one or more of the following events shall constitute an "**Event of Default"** hereunder, after expiration of any applicable cure period as set forth below, unless such event results from the occurrence of a Force Majeure event:

Section 9.1.1 Redeveloper's Non-Performance. Provided that the conditions precedent to the obligation to perform set forth in Section 2.3 above have been satisfied or waived by Redeveloper, failure of: (a) Redeveloper to make substantial progress on all or a portion of its obligations with respect to development or construction of the Redevelopment Project, as the case may be and except as permitted in this Agreement, for any period of three (3) consecutive years and continuance of such failure for a period of ninety (90) Days after Redeveloper's receipt of written notice from SARA or the City, as applicable, specifying the nature of the default and requesting that the default be remedied; (b) Failure of Redeveloper to make any payment required by this Agreement within thirty (30) Days after written notice from SARA or the City, as applicable, that same is past due; or (c) Failure of the Redeveloper to abide by the covenants in Sections 8.1.1 through 8.1.6. If the failure is with respect to a Phase of the Redevelopment Project, the Redeveloper shall not be in default with respect to any other Phases of the Redevelopment Project; provided, however, if the breach of any such obligation is one which cannot be completely remedied within the ninety (90) Days after such written notice has been received, Redeveloper shall have such additional time as is reasonably necessary for Redeveloper to finalize such cure and it shall not be an Event of Default as long as the Redeveloper is proceeding with reasonable diligence to remedy the same as soon as practicable.

Section 9.1.2. **SARA's Non-Performance** A material and substantial failure of SARA to observe and perform any covenant, condition or agreement in this Agreement and continuance of such failure for a period of 90 Days, after receipt of written notice from the Redeveloper specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the 90 Days after such written notice has been received, SARA shall have such additional time as is reasonably necessary for SARA to finalize such cure and it shall not be an Event of Default as long as SARA is proceeding with reasonable diligence to remedy the same as soon as practicable.

Section 9.2 Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the acts, events or conditions or any combination thereof described in Sections 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.5, 9.2.6 and 9.2.7 that has had, or may be reasonably expected to have, a direct, material, adverse effect on the rights or obligations of the Parties to 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 an obligation or complying with any condition required of such Party under the terms of this Agreement ("**Force Majeure**"):

Section 9.2.1 Force Majeure Events. An act or acts of God, acts of the public enemy, acts or omissions of other parties (including litigation by third parties), flood, fire, epidemics, quarantine restrictions, embargoes, earthquake, explosion, the elements, unusually severe weather, or other casualty, war, terrorism, blockade, security problems, insurrections, riots, mob violence or civil disturbance, acts of the Federal government, acts of other parties, inability to procure or a general shortage of labor, equipment or facilities, energy, freight, materials or supplies in the open market, failure of transportation, strikes, walkouts, boycotts, picketing, slow-downs, work stoppages or other labor actions, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any Federal, State or Governmental Body with respect to Approvals or the development of the Redevelopment Project, affecting the rights or obligations of Redeveloper or SARA hereunder, court orders, laws, rules, regulations or orders of Governmental Bodies, or any other similar cause not within the control of Redeveloper.

Section 9.2.2 Government Action. The order, judgment, action or inaction (including condemnation of any portion of the Site) and/or determination of any Governmental Body (other than SARA when acting in conformance with this Agreement) with jurisdiction over SARA or the Site, excepting decisions interpreting Federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of any portion of the Redevelopment Project or Redeveloper's performance under this Agreement; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party to this Agreement relying thereon and that neither the contesting of any such order, judgment, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

Section 9.2.3 Change in Law. The enactment, adoption, promulgation, modification, reinterpretation, or repeal or with respect to any Applicable Law adopted, enacted or amended or repealed subsequent to the Effective Date, which change materially adversely affects the Redeveloper's ability to build the Redevelopment Project; provided, however, that the Redeveloper shall diligently contest and/or take appropriate action to appeal the change within ninety (90) days following the date on which the Redeveloper becomes aware of it.

Section 9.2.4 Contamination. The presence of unforeseen contamination or pollution, or the discharge of Hazardous Materials on the Site, except to the extent caused by the actions or inactions of Redeveloper outside of the course of normal remediation activities.

Section 9.2.5 Economic Downturn. Prolonged economic downturn or recession that make the Redevelopment Project economically or financially unfeasible, result in a interrupted cessation of construction activities of at least 6 months or lead to a failure of performance by a construction or permanent lender, including but not limited to a downtown or recession evidenced by a legislative or executive finding or recognition by a Governmental Body that there exists a drying up of liquidity, rising/falling prices, such as due to inflation/deflation or other financial crises.

Section 9.2.6 Failure of Approval. The suspension, termination, interruption, denial, failure of, or delay in renewal or issuance of any Approval; provided, however, that such suspension, termination, interruption, denial, 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, failure of, or delay in 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. Delay in issuance of an Approval resulting from Redeveloper's failure to make an administratively complete submission for an Approval shall not be an event of Force Majeure;

Section 9.2.7 Lawsuits. Lawsuits or other legal actions taken by any Person challenging the transactions contemplated by this Agreement, or any other regulatory or administrative delay, except that any lawsuit or other legal action initiated by Redeveloper, an Affiliate of Redeveloper and any Person with an equity interest therein shall not be an event of Force Majeure.

Section 9.3 Procedure. The Parties acknowledge that the acts, events or conditions set forth in Section 9.2.1 through Section 9.2.8 are intended to be the only acts, events or conditions that may (upon satisfaction of the conditions specified above) constitute Force Majeure. Notice by the Party claiming Force Majeure, or any extension of the Schedule necessitated thereby, shall be sent to the other Party within 30 Days of the commencement of the Force Majeure event. During any Force Majeure that affects part of the Redevelopment Project or performance under this Agreement, Redeveloper shall continue to perform its obligations for the remainder of the term of the Redevelopment Project or the remainder of the term of this Agreement to the extent such obligations are not materially, adversely impacted as a result of such Force Majeure event. The existence of an event of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure; provided that the event that is the basis of the Event of Default is not a result of the Force Majeure. Notwithstanding anything contained herein to the contrary, in the event of a Force Majeure event described in Section 9.2.1, the Party claiming such extension shall have an ongoing obligation to contest such lawsuit or other legal action, regulatory or administrative delay, to the extent applicable, and shall perform all acts necessary to terminate such Force Majeure event.

Section 9.4 Remedies. If an Event of Default occurs and SARA is the defaulting party, after giving effect to notice and cure rights, Redeveloper may, in its sole and absolute discretion, exercise its rights to terminate this Agreement and/or take whatever action, at law or in equity, it may deem desirable, including the seeking of actual damages, or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default, excluding specific performance and consequential or punitive damages If an Event of Default occurs and Redeveloper is the defaulting party, then SARA may terminate this Agreement and Redeveloper's designation as the redeveloper, but only with respect to any properties to which Redeveloper has not acquired title. In furtherance of the foregoing, Redeveloper and SARA shall each be entitled to a written release evidencing such party's release of responsibility for any and all claims for consequential or punitive damages.

Section 9.5 <u>No Waiver Due to Failure or Delay</u>. Except as otherwise expressly provided in this 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 rights or remedies, or deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

Section 9.6 <u>Remedies Cumulative</u>. No remedy conferred by any of the provisions of this 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, except as limited above. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 9.7 <u>Continuance of Obligations</u>. The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Agreement.

Section 9.8 <u>Mitigation</u>. The Parties shall act reasonably to mitigate any damages incurred as the result of an Event of Default.

Section 9.9 <u>Survival of Termination</u>. The provisions of this Article shall survive the termination of this Agreement as a result of an Event of Default by Redeveloper.

Section 9.10 <u>No Consequential Damages</u>. Neither SARA, Redeveloper, nor any of their respective Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees, consultants or representatives shall be liable in any action at law or in equity, arising from an event constituting breach in connection with this Agreement, in contract, tort, strict liability or otherwise, to the other Person, including Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees or representatives of the other Party, for loss of profits, revenues or expectancies, loss of use or loss of business opportunities or for any special, consequential, indirect or incidental damages, punitive, exemplary or multiplier damages; provided however, that subject to the foregoing, each Party (a) may pursue any equitable remedy available to it to compel the other Party and its Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees or representatives to perform or cause to be performed any act which such Party is required to perform in connection with this Agreement and to enjoin such Party and Persons from performing or causing to be performed any act which constitutes or would constitute an Event of Default by such Party or is inconsistent with the obligations of such Party under this Agreement, and (b) may pursue any remedy available to it at law or in equity to recover its actual, direct, out of pocket, damages resulting from a default by the other Party, and any payment obligation of such Party hereunder

ARTICLE X

CONTROL OF REDEVELOPER; TRANSFERS OF INTERESTS; QUALIFIED ENTITY

Section 10.1 Control of Redeveloper and Management of Redevelopment; Transfers of Ownership Interests and Management Control.

Section 10.1.1 Prohibition Against Transfers. Pursuant to N.J.S.A. 40A:12A-9, Redeveloper acknowledges that except as permitted by the provisions of this Agreement, including but not limited to mortgage financing pursuant to Section 13.1, and except for sales of residential units and the rental of residential units and non-residential space in the ordinary course of its business, neither Redeveloper nor any Affiliate of Redeveloper shall be permitted to Transfer the Site or the Redevelopment Project, or any portion thereof, or a controlling interest in the Redeveloper, without the written consent of SARA.

Section 10.2 Permitted Transfers.

(a) The following transfers of the Redevelopment Project or any Phase thereof are exceptions to the prohibition set forth in Section 10.1 and shall not require further approval by SARA because SARA hereby grants its approval to permit:

i. Conveyance to any end user (tenant or buyer) of residential or commercial space in the Redevelopment Project;

ii. Conveyance to a reputable purchaser or lender;

iii. Conveyance to any operator of a business to be operated within the Site, such as an agreement with a hotel management or franchise company;

iv. Conveyance of utility, access and other development easements;

v. Conveyance to SARA, the City or Redeveloper's Affiliate of any portion of the Redevelopment Project under the terms of this Agreement;

vi. Conveyance to an urban renewal entity, as that term is defined in the Long Term Tax Exemption Law, Controlled by the Redeveloper;

vii. Conveyance by Redeveloper or its members to effect a Transfer of interests in Redeveloper directly, or in trust, to family members, an entity owned by family members, or charities; provided that after such Transfer(s), the Controlling Parties retain voting control of all interests Transferred;

viii. a transfer of title to a Holder upon a foreclosure or a transfer in lieu of foreclosure;

ix. Transfer of a Phase, Phases or a portion of the Redevelopment

Project to a Subredeveloper, provided that such Transfer meets the requirements set forth in Section 2.4 herein; and

x. Any contract or agreement with respect to any of the foregoing exceptions.

Section 10.3 Conveyance of Site, or Portion(s) Thereof to a Qualified Entity. SARA hereby consents to a conveyance of the Redevelopment Project or any Phase thereof to a Qualified Entity, as defined in Section 10.5.

Section 10.4 Permitted Transfer of Ownership Interests in Redeveloper and/or Management Control

Section 10.4.1 Permitted Transfer of Ownership Interests in Redeveloper and/or Management Control to a Related Entity. SARA hereby consents to the Transfer of direct or indirect ownership interest in the Redeveloper provided that the following criteria are satisfied: the Controlling Parties, individually or in the aggregate, (a) retain the right, directly or indirectly, to exercise direct legal Control of the management decisions and policies of Redeveloper (i.e. Control at least 51% of the voting rights of Redeveloper), and (b) retain full management Control over the day to day operations of Redeveloper.

Section 10.4.2 Permitted Transfer of Ownership Interests in Redeveloper and/or Management Control to a Qualified Entity. SARA hereby consents to the Transfer of direct or indirect ownership interest in the Redeveloper to a Qualified Entity, as defined in Section 10.5.

Section 10.5 Qualified Entities. A potential transferee which has demonstrated, to the reasonable satisfaction of SARA, that it satisfies the requirements of this Section 10.5 shall be a Qualified Entity; provided, however, that SARA may waive any one or more of the requirements in Section 10.5 at any time in its sole and absolute discretion.

Section 10.5.1 Financial Capacity. The transferee has the financial capacity to Commence, Complete and operate the Redevelopment Project, including, without limitation, the capacity and good credit to provide equity, obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Redevelopment Project;

Section 10.5.2 Expertise. The transferee possesses or has the ability to bring to bear the requisite expertise in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance and real estate development necessary to Complete the Redevelopment Project, including comparable development experience with developments that are similar in size, scope and complexity to the Redevelopment Project.

Section 10.5.3 Insolvency. No petition under Federal bankruptcy laws or any state insolvency law has been filed by or against the transferee, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such Person, or any partnership in which such Person was or is a general partner or any Person in which such Person was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of 10% (and, in the case of an involuntary proceeding, such proceeding has not been terminated within 60 Days of its commencement) within the 10 full years preceding the date of submission of such Person's application for consideration as a Qualified Entity;

Section 10.5.4 Criminal Investigation. The transferee and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such Person, is not a target of a criminal investigation

Section 10.5.5 Default. The transferee and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with SARA or other Governmental Body which has been terminated due to a default by such Person or which is currently the subject of a dispute in which SARA or other Governmental Body alleges such default;

Section 10.5.6 Securities Violations. The transferee and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Federal or state law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision;

Section 10.5.7 Ethics Violations. The transferee and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any City, State or Federal ethics law, and entering into the proposed transaction with Redeveloper and/or SARA shall not cause any such violation or result in a conflict of interest.

Section 10.6 Redeveloper Certification. On or before each anniversary of the Effective Date, Redeveloper shall provide SARA with a certificate (a) indicating that Redeveloper continues to be in compliance with the requirements of Section 10.4 as of the date of such certificate and (b) affirming the Redeveloper Covenants.

ARTICLE XI

REPRESENTATIVES

Section 11.1 Redeveloper Executive. Following the execution of this Agreement, Redeveloper shall designate in writing to SARA the name of an individual who is the **"Redeveloper Executive**" with full authority to execute any and all instruments, documents or notices requiring Redeveloper's signature and to act on behalf of Redeveloper with respect to all matters arising out of this Agreement. SARA shall be entitled to rely and shall be fully protected in relying upon any instrument, document or notice signed or action taken by a Redeveloper Executive, unless and until it receives notice in writing from Redeveloper of the termination of the Redeveloper Executive's authority. Notwithstanding the foregoing, Redeveloper shall provide to SARA from time to time upon request, evidence, such as, without limitation, clerk's or manager's certificates, members and stockholders resolutions attesting to the authority of each Redeveloper Executive generally or with respect to any particular signature or action. The Redeveloper Executive shall respond to and make themselves available for consultation with SARA with respect to all questions, requests or comments arising out of this Agreement.

Section 11.2 SARA Representative. Following the execution of this Agreement, SARA shall designate in writing to Redeveloper the name of an individual who is the "**SARA Representative**," who shall act as liaison and contact between Redeveloper and SARA in administering and implementing the terms of this Agreement. Redeveloper shall submit all requests for consent or review of matters which require consent or review by SARA, and all materials to be submitted in connection therewith to SARA Representative, who shall either consent or obtain SARA's consent (as to matters requiring consent) or review or cause to be reviewed and respond to any matter requiring SARA review and response. Redeveloper and any person dealing with SARA in connection with any consent or review required under this Agreement may rely and shall be fully protected in relying upon the authority of SARA Representative to act for SARA in connection with any such consent or review.

Section 11.3 Change of Representative. From time to time following the execution hereof, SARA or Redeveloper may change or replace its respective representative, upon 5 Business Days' written notice, delivered to such Party in the manner and at the address indicated in Section 12.1.

ARTICLE XII

NOTICES AND DEMANDS; TRANSFER OF FUNDS

Section 12.1 <u>Notice</u>. A notice, demand or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or facsimile numbers:

If to SARA, to:

South Amboy Redevelopment Agency
140 North Broadway
South Amboy, New Jersey 08879
Attn: Chairperson

with a copy to:

Craig Coughlin, Esq.
1 Stern Place
Fords, New Jersey 08863

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Attn: Joseph P. Baumann, Jr., Esq.

If to the City:

Office of the City Clerk
140 North Broadway
South Amboy, New Jersey 08879

With a copy to:

City Attorney
Lanza & Lanza
5 Main Street
Flemington, New Jersey 08822
Attn: John R. Lanza, Esq.

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

Attn: Joseph P. Baumann, Jr., Esq.

If to Redeveloper, to:

Manhattan Beach Club Street, LLC
2701 Renaissance Boulevard, 4th Floor
King of Prussia, Pennsylvania 19406
Attention: Richard Heany

with a copy to:

Gibbons P.C.
One Gateway Center
Newark, NJ 07102
Attn: Michael J. Lubben, Esq. and Andrew J. Camelotto, Esq.

And

Sherman Capital Markets, LLC
200 Meeting Street, Suite 206
Charleston, SC 29401
Attn: Todd Kuhl

And

Gibbons P.C.
One Gateway Center
Newark, NJ 07102
Attn: Michael J. Lubben, Esq. and Andrew J. Camelotto, Esq.

Section 12.2 Notice Amendments. Either Party may from time to time by written notice given to the other pursuant to the terms of this Article XII change the address, facsimile number or persons to which notices shall be sent or designate additional or replacement persons to whom notices are sent.

Section 12.3 Transfer of Funds. All funds to be transmitted by Redeveloper to SARA or by SARA to Redeveloper under this Agreement shall be transmitted by wiring immediately available Federal funds in accordance with wire instructions provided by each Party to the other at or immediately following execution of this Agreement. Such wire instructions may be changed from time to time upon 10 Business Days' prior written notice to the other Party, given in accordance with this Article XII.

ARTICLE XIII

MORTGAGE FINANCING; RIGHTS OF MORTGAGEE

Section 13.1 Mortgage Financing. Redeveloper shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon any portion of the Site whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to any portion of the Site, except as may be specifically required for the purpose of obtaining funds in connection with the acquisition and development of any portion of the Site, including but not limited to architecture, design, engineering, entitlements, legal costs and marketing and construction of the Redevelopment Project, or any Phase; provided, however, that upon the issuance of the Certificate of Completion for the Redevelopment Project or any Phase, such prohibition shall no longer apply to such the Redevelopment Project or applicable Phase. The Redeveloper shall arrange for all construction and permanent financing for the Redevelopment Project upon such terms and conditions as the Redeveloper shall determine, in the Redeveloper's sole and absolute discretion. Redeveloper shall take no action in conjunction with construction and financing of the Redevelopment Project that would preclude, obstruct or otherwise compromise the ability of the Redeveloper to ensure that the Redevelopment Project is developed consistent with the Redevelopment Plan. Redeveloper shall notify SARA in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Redevelopment Project or any part thereof (the mortgagee thereunder or its Affiliate, a "**Holder**") and, in any event, Redeveloper shall promptly notify SARA of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Site, whether by voluntary act of Redeveloper or otherwise, upon obtaining knowledge or notice of same. The provisions of this Agreement shall not be deemed to grant to SARA the right to approve or review the terms of any such proposed financing. In connection with any such proposed financing, Redeveloper may also collaterally assign to the Holder, Redeveloper's right under this Agreement with respect to the Site.

Section 13.2 Notice of Default to Redeveloper and Right to Cure. Whenever SARA shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, SARA shall at the same time deliver to each Holder a copy of such notice or demand; provided that Redeveloper has delivered to SARA a written notice of the name and address of such Holder. In the event that Redeveloper fails to make any payment required under this Agreement (a "**Monetary Default**"), each such Holder shall (insofar as the rights of SARA are concerned) have the right at its option within 90 Days after the receipt of such notice of such Monetary Default, to cure or remedy, or to commence to cure or remedy, any such Monetary Default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. *(By way of clarification, this provision does not acknowledge the validity of any such notice of default, nor does it give rise to any remedies for the Lender in the event of a default, such as a right to cure. The Holders rights as they relate to the Redeveloper shall be controlled by the relevant agreements between Holder and Redeveloper.)*

Section 13.3 **Guarantee of Construction or Completion.** A Holder shall in no manner be obligated by the provisions of this Agreement to construct or Complete the Redevelopment Project, or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Redevelopment Project (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to SARA with respect to the Redevelopment Project, or any part thereof that is subject to the Holder's mortgage. Any Holder who shall properly complete the Redevelopment Project or applicable part thereof shall be entitled, upon written request to SARA, to receive a Certificate of Completion as set forth in Section 3.14, notwithstanding any breach or default on the part of Redeveloper that may be in effect or in dispute at the time of the Holder's request.

Section 13.4 **Foreclosure.** If a Holder forecloses its mortgage secured by the Site, or takes title to the Site by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Holder shall have the option to either (a) sell the Site to a responsible Person reasonably acceptable to SARA, which Person shall assume the obligations of Redeveloper under this Agreement in accordance with law, and/or (b) itself assume the obligations of Redeveloper under this Agreement and in accordance with Applicable Law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement, SARA shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to SARA pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or the Person assuming the obligations of Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Redevelopment Project in the manner provided in this Agreement and undertake Redeveloper's obligations under this Agreement, but subject to reasonable extensions of the Commencement Date and Completion Date, and shall submit evidence reasonably satisfactory to SARA that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or Person assuming such obligations of Redeveloper, properly Completing the Redevelopment Project shall be entitled to a Certificate of Completion in accordance herewith. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Site, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the Redevelopment Plans.

Section 13.5 **SARA's Option to Pay Mortgage Debt or Purchase Land.** In any case where, subsequent to an Event of Default by Redeveloper under this Agreement and/or Foreclosure, the Holder:

(a) has, but does not exercise, the option to construct or Complete the Redevelopment Project and such failure continues for a period of 60 Days after the Holder has been notified or informed of the Event of Default; or

(b) undertakes construction or Completion of the Redevelopment Project but does not Complete such work within a reasonable period, and such default shall not have been cured within 60 Days after written demand by SARA so to do (Section 13.5(a) and (b) each a "**Holder Failure**"); then SARA shall have the option of paying to the Holder the amount of the mortgage debt and obtaining an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Site has vested in such Holder by way of foreclosure or action in lieu thereof, SARA shall be entitled, at its option, to a conveyance to it of the Site or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all fees and expenses with respect to the foreclosure, including reasonable attorney's fees and expenses; (iii) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (iv) the costs incurred by such Holder in making any improvements to the Redevelopment Project; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made prior to Completion of the Redevelopment Project shall provide for the foregoing.

ARTICLE XIV

MISCELLANEOUS

Section 14.1 Procurement of Public Funds. SARA and Redeveloper shall cooperate and act together to identify, apply for, and take steps necessary to procure any funding deemed appropriate by SARA, and available from Federal, State, County or local sources to be used to advance the redevelopment of the Site.

Section 14.2 Provisions Not Merged. None of the provisions of this Agreement are intended to or shall be merged by reason of any prior agreement, lease or other contract before SARA and Redeveloper.

Section 14.3 Non-Liability of Officials, Employees, Agents and Consultants of SARA and the City. No member, official, employee, agent or consultant of SARA, the City or their Affiliates shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by SARA or the City or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement.

Section 14.4 Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner or employee of Redeveloper or its Affiliates shall be personally liable to SARA or the City, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to SARA or the City, or its successor, on any obligation under the terms of this Agreement.

Section 14.5 No Brokerage Commissions. SARA and Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either SARA or Redeveloper, and SARA and 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 14.6 Successors and Assigns. This Agreement may not be assigned by Redeveloper except as otherwise provided in this Agreement. This Agreement may be assigned by SARA to the City provided that the Redeveloper agrees consistent with the requirements of N.J.S.A. 40A:12A-4, and upon such assignment shall be binding upon and inure to the benefit of the successors and assigns of SARA.

Section 14.7 Enforcement by SARA. It is intended and agreed that SARA, the City and their successors and assigns shall be deemed beneficiaries of this Agreement and the Redeveloper Covenants. This Agreement and the Redeveloper Covenants shall run in favor of SARA and the City for the entire period during which this Agreement and the Redeveloper Covenants shall be in force and effect, without regard to whether SARA or the City have at any time, been or remain an owner of any land or interest therein to or in favor of which this Agreement or the Redeveloper Covenants relate. SARA, on behalf of itself and/or the City, shall have the right, in the event of any breach of this Agreement or the Redeveloper Covenants, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings, subject to the limitations set forth herein, to enforce the curing of such breaches to which SARA and/or the City, and their successors and assigns, may be entitled.

Section 14.8 Enforcement by Redeveloper. It is intended and agreed that Redeveloper is a beneficiary of the agreements and covenants set forth in this Agreement. Such agreements and covenants shall run in favor of Redeveloper for the entire period during which such agreements and covenants shall be in force and effect. Redeveloper shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiary(ies) of such agreement or covenant may be entitled.

Section 14.9 Drafting Ambiguities; Interpretation; Review by Counsel. In interpreting any provision of this 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 Agreement, each Party acknowledging that it and its counsel has had an opportunity to review this Agreement and has contributed to the form of same.

Section 14.10 Conflict of Interest. No member, official or employee of SARA or City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

Section 14.11 No Consideration for Agreement. Redeveloper warrants it has not paid or given, and shall not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of SARA or the City, any money or other consideration for or in connection with this Agreement.

Section 14.12 No Third Party Beneficiaries. This Agreement is for the exclusive benefit of the Parties and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third Person.

Section 14.13 Alterations, Amendments and Modifications to Agreement. Except as provided in the next sentence, no alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties with the same formality as this Agreement. In the event that any contractual provisions that are required by Applicable Law have been omitted, then SARA, the City and Redeveloper agree that this Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Parties agree to act in good faith to mitigate such changes in position.

Section 14.14 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument, provided that all parties hereto have each executed one such counterpart.

Section 14.15 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective Parties hereto, their legal representatives, successors, heirs and permitted assigns.

Section 14.16 Construction. This Agreement shall be construed in accordance with the laws of the State. Any controversy between the Parties having to do with this Agreement or the Exhibits annexed hereto involving the construction or application or this Agreement or said Exhibits, shall be resolved by submission to a court of competent jurisdiction.

Section 14.17 No Recordation of Agreement. This Agreement or any part hereof shall not be recorded by Redeveloper without the prior consent of SARA attached to such instrument prepared for recording. Any recording in violation of this provision shall be void ab initio and the party who records this Agreement, or any part hereof, shall, be liable for attorney's fees and costs resulting to clear said recorded instruments from the records.

Section 14.18 Waivers. The failure of SARA, the City or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by SARA, the City or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of Redeveloper, SARA or the City.

Section 14.19 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to choice of laws principles.

Section 14.20 Severability. If any article, section, subsection, term or provision of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law; provided that no such severance shall serve to deprive any Party of the enjoyment of its substantial benefits under this Agreement.

Section 14.21 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and SARA, their relationship being solely as contracting Parties under this Agreement.

Section 14.22 Entire Agreement; Prior Agreements Superseded. This Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties. This Agreement, together with any other documents executed by the Parties contemporaneously herewith, contains the entire understanding between the Parties with respect hereto.

Section 14.23 Release of Liability. It is expressly and irrevocably agreed by each of the Parties that the execution of this Agreement constitutes a waiver of all right(s), claim(s), benefit(s) and/or cause(s) of action that either Party may have against any other Party or Person at law and/or in equity (specifically including, without limitation, pursuant to any prior agreements entered into between the Parties or any Affiliates of the Parties) resulting from any and all acts of the Parties in connection with the negotiation of a redevelopment agreement and this Agreement, except for fraud, material misrepresentations, or other bad acts.

Section 14.24 Counting of Days; Saturday, Sunday or Holiday. If the final date of any period provided in this Agreement for the performance of an obligation or for the taking of any action falls on a Day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

Section 14.25 Cooperation. The Parties shall cooperate with each other in all matters deemed necessary or of assistance in achieving the objectives of this Agreement and the Redevelopment Plan.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and their corporate seals affixed (if applicable) and attested as of the date first above written.

WITNESS:	**SOUTH AMBOY REDEVELOPMENT AGENCY**
____________________________	**By:** ______________________________
Name:	**Name: Kevin Meszaros**
Title:	**Title: Chairman**
WITNESS:	**CITY OF SOUTH AMBOY**
____________________________	**By:** ______________________________
Name:	**Name: Fred Henry**
Title:	**Title: Mayor**
WITNESS:	**MANHATTAN BEACH CLUB STREET, LLC**
____________________________	**By: Wharf Street, LLC**
Name:	**It's Manager**
Title:	
	By: ________________________
	Name:
	Title:

EXHIBIT A

Approvals

	Approving Agency	Submissions Approved
Local	1. South Amboy Redevelopment Agency (SARA)*	1a. Designation of BNE as Subredeveloper
	2. City of South Amboy Planning/Zoning Board	2a. Adoption of GDP Ordinance
	3. City of South Amboy / SARA*	3a. Approval and Execution of BNE Subredevelopment Agreement
	4. City of South Amboy / City of South Amboy Planning/Zoning Board*	4a. Amendment of the Redevelopment Plan
	5. City of South Amboy*	5a. Approval and Execution of PILOT Agreement for BNE Site
	6. City of South Amboy	6a. Approval and Execution of Sewer Agreement
	7. City of South Amboy Planning/Zoning Board	7a. Preliminary and Final Major Site Plan
	8. City of South Amboy & Middlesex Water Company	8a. Endorsement of Safe Drinking Water Permit Application 8b. Endorsement of Treatment Works Approval Application
	9. Freehold Soil Erosion	9a. Soil Erosion and Sediment Control Certification
	(*Approvals Needed Contemporaneously with the Execution of the Redevelopment Agreement)	

	Approving Agency	Submissions Approved
County	1. Middlesex County Planning Board 2. Middlesex County Utilities Authority	1a. Preliminary and Final Major Site Plan 2a. Endorsement of Treatment Works Application
State	1. New Jersey Department of Environmental Protection (NJDEP)	1a. Flood Hazard Area Individual Permits for construction of buildings, parking areas within Flood Hazard Area 1b. Upland Waterfront Development Permit 1c. Freshwater Wetlands - General Permits/Transition Area Waivers 1d. Waterfront Development Permit 1e. Tidal Wetlands Permit 1f. Tidelands Conveyance (Grant, Lease or License) 1g. Treatment Works Approval 1h. Bureau of Safe Drinking Water 1i. RFA - NJDPDES Permit
Federal	1. Environmental Protection Agency 2. Army Corps of Engineers	1a. Exemption to Environmentally Sensitive Areas restriction on sanitary system connection 2a. U.S. Army Corps of Engineers Section 404 Permit - Nationwide/Individual Permits 2b. U.S. Army Corps of Engineers Section 10 Permits

EXHIBIT B

Concept Plan

EXHIBIT C

Controlling Parties

Ben Navarro

EXHIBIT D

Design Standards

BEACON PLANNING AND CONSULTING SERVICES, L.L.C.

COLTS TOWNE PLAZA, SUITE 129 | TEL. (732) 845-8103
315 STATE HIGHWAY 34 | FAX (732) 845-8104
COLTS NECK, NJ 07722

BEACH CLUB DISTRICT
DESIGN STANDARDS
CITY OF SOUTH AMBOY, NEW JERSEY

Beacon File: A14097
November 2014
Rev. 11/10/2014

SOUTH AMBOY GOVERNING BODY

FRED HENRY, MAYOR
DONALD APPLEGATE
CHRISTINE NOBLE
ZUSETTE DATO
JOE CONNORS
MICHAEL GROSS

SOUTH AMBOY PLANNING BOARD

FRED HENRY, MAYOR
MICHAEL WILDAY, CHAIRMAN
CHRISTINE NOBLE, COUNCIL APPT.
RICHARD MORAN
PEGGY SCARILLO
FRANK MILATTA
FRANCIS MULVEY
THOMAS KELLY
BETTE LEIBOWITZ, 1^{ST} ALTERNATE
DARCY MCCABE-BREW, 2^{ND} ALTERNATE
ROBERT PAULUKIEWICZ, 3^{RD} ALTERNATE

SOUTH AMBOY REDEVELOPMENT AGENCY

ERIC F. M. CHUBENKO, EXECUTIVE DIRECTOR
CRAIG COUGHLIN, ESQ., COUNSEL
TERRANCE O'NEILL , TREASURER
KEVIN MESZAROS – CHAIRMAN
BENJAMIN BLOCK – VICE CHAIRMAN
ZUSETTE DATO
JACK O'CONNELL
WILLIAM SCHWARICK
CAMILLE TOOKER

PLANNING BOARD SECRETARY

STACEY KENNEDY

PLANNING BOARD ATTORNEY

JOSEPH J. MARAZITI, JR., ESQ.

PLANNING BOARD PLANNER

ANGELO VALETUTTO

TABLE OF CONTENTS

1.0 Design Standards

1.1 Preamble:

The Beach Club District is located along the Raritan River in close proximity to public transportation and South Amboy's downtown. This unique location and its array of attributes demand the incorporation of the best features of waterfront development and of creating a sense of place while encouraging interaction with the Broadway/Main Street District in order to support local businesses and adjacent redevelopment efforts. Fundamental to the redevelopment of the Beach Club District is the creation of a multi-family and recreational district that is cognizant of and responds to the needs of the surrounding residential and commercial neighborhoods and the overall community. Visual and functional transition elements are essential. Off-street parking, clearly defined access from Rosewell Street, an architectural style that attractively integrates potential recreational and residential land uses, quality building materials, and an enticing streetscape are all key requirements of the Redevelopment Plan. The Beach Club District should encourage resident commuters to take advantage of the variety of convenient transportation modes through the provision of adequate and thoughtfully located parking, walking paths and site access points. The Beach Club District should encourage the integration of lifestyle patterns that will add to the vibrancy of South Amboy while supporting its economic base. The Beach Club District is envisioned as a community that is inviting to all residents of South Amboy and draws citizens to a variety of waterfront activities, recreational opportunities and artistic forums. The creation of such a destination will support business opportunities throughout South Amboy while fostering a sense of community pride and engagement.

1.2 Purpose:

- To set forth guidelines and standards that promote the creation of a functional and attractive development that shall promote and give due consideration to the health, safety, general welfare, morals, order, efficiency, economy, maintenance of property values, and character of the City of South Amboy.

- To ensure that any development shall comply with the stated goals and objectives of the Beach Club District Redevelopment Plan.

- To provide guidelines and standards that shall be used by an applicant in preparing a redevelopment proposal, and by the designated redevelopment entity in reviewing same.

- To minimize adverse impacts of flooding, drainage, erosion, vehicular traffic, pedestrian movement, parking, vibration, lighting and glare, noise, odor, solid waste disposal, litter, ventilation, vibration, crime and vandalism, and inappropriate design and development.

- To ensure that any new development gives due consideration to the physical, visual and spatial characteristics of the existing and proposed streetscape, neighborhood and district in which it is located and the City generally, while providing sufficient opportunity for creativity in design.

- To ensure that the physical, visual and spatial characteristics of any proposed development will be consistent with and complementary to existing residential and commercial land uses in the adjacent neighborhoods. The proposed development shall not be so markedly incongruous with the characteristics of the existing or proposed streetscape, neighborhood and district in which such is located, and the City generally, so as to materially detract from the real property value of adjacent or nearby properties.

1.3 Site Standards:

- *Building location*. Buildings shall be located to front towards and relate to a street frontage, both functionally and visually, and with a primary orientation to the waterfront if appropriate. Spatial relationships between buildings shall be geometrically logical and architecturally formal. All buildings shall be located in a manner that allows for adequate safe access for fire and emergency vehicles.

- *Pedestrian Circulation*. A barrier-free walkway system shall be provided in order to allow pedestrian access to a building from the City's sidewalk system. Such walkway system shall promote pedestrian activity both within the site itself and throughout the community by its integration with the City's sidewalk system. Walkways shall be separated from motor vehicle circulation to the greatest extent possible. Crosswalks shall be clearly delineated through the use of distinct materials and color/texture variations.

- *Decorative lampposts*. Decorative lampposts shall be provided along the periphery of a site where such lighting is not already provided. Lampposts shall be approximately 16 feet high, and spaced at intervals of approximately 40 feet to 60 feet along or near all street lines and driveways. Walkways located within the interior of a site shall have decorative lampposts 16 feet high, and spaced at intervals of approximately 40 feet to 60 feet. The style, size, color and type of light source of such lampposts shall be in accordance with generally accepted City streetscape standards or its functional and aesthetic equivalent. Lighting levels from such fixtures shall be in accordance with City standards.

- *Sidewalk type and streetscape details*. Sidewalks and all other streetscape improvements along adjacent public streets shall be completed in accordance with the City's design standards.

- *Private Open Space*. Private open space, designated for any residential uses, that is adjacent to or visible from public areas shall be demarcated with walls and/or fencing.

1.4 Architectural Design Standards:

- *Massing*. New buildings shall be designed to be compatible with the scale, form, and proportion of adjacent existing development and adjacent redevelopment initiatives. Building wall offsets or exterior material variations shall be provided along any building wall measuring greater than 100 feet in length in order to provide architectural interest and variety to the massing of a building and to relieve the negative visual effect of a single, long wall. The total measurement of such offsets shall equal a minimum of 5 percent of the building wall length.

- *Continuity* of *treatment*. All sides of a building shall be architecturally designed so as to be compatible with regard to style, materials, colors and details.

- *Roof*. The type, shape, pitch, texture and color of a roof shall be considered as an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors and details of such building.

- *Windows*. Fenestration shall be architecturally compatible with the style, materials, colors and details of a building.

- *Entrances.* All entrances to a building shall be defined and articulated by utilizing such elements as lintels, pediments, pilasters, columns, porticoes, overhangs, canopies, railings, balustrades and other such elements, where appropriate. Any such element utilized shall be architecturally compatible with the style, materials, colors and details of such building.

- *Physical plant.* All air-conditioning units, HVAC systems, exhaust pipes or stacks, and elevator housing shall be shielded from view for a minimum distance of 500 feet from the site. Such shielding shall be accomplished by utilizing parapets, the walls or roof of the building, or a penthouse-type screening device that shall be designed to be architecturally compatible with the style, materials, colors and details of such building. Any HVAC or device penetrations (such as grills or PTAC sleeves) or vents located along any street oriented façade shall be shielded from view with decorative metal grills. The design of the grills shall be presented to the Planning Board for approval at the time the redevelopment application is presented for review. An example of such a treatment is offered in the photo below.

- *Residential over parking.* When residential construction is proposed over parking, the parking level shall be designed to create an attractive and compatible street appearance through the utilization of high quality materials and an architectural style that integrates essential residential design elements. The parking level shall incorporate attractive grillwork for all ventilation openings and secure access shall be provided for all private parking levels. The Planning Board shall review the architectural treatment for all parking levels at the time the redevelopment application is presented for review. The vehicular access door at a controlled entrance to any parking level shall be an architectural feature and should not be industrial in appearance.

- *Elevated amenity decks.* When residential construction is proposed over a single or multiple parking levels and an open "courtyard" is created, the courtyard should be integrated into the structure as an amenity deck for the residents of that structure. Deck surfaces should be attractively finished with high quality, durable and architecturally interesting materials, such as pavers, wood or simulated wood decking, or stone. When multiple buildings containing this feature are proposed, the amenities offered on each deck can be varied and access to the amenities can be shared within the community. Amenities on such elevated decks may include, but need not be limited to, pools, putting greens, dog walks, sitting areas, landscaped beds, fire pits, grill areas, fireplaces, outdoor lounges, playgrounds, bocce courts, outdoor billiards or ping pong, and outdoor television viewing spaces. Examples are included in the photos below.

- *Materials, colors, and details.* All materials, colors and details used on the exterior of a building shall be architecturally compatible with the style of such building, as well as with each other. A building designed of an architectural style that normally includes certain integral materials, colors and/or details shall have such incorporated into the design of such buildings. Brick veneer, thin-brick, EIFS, and vinyl siding shall be prohibited. Architecturally interesting combinations of quality materials, such as brick, stone, metal panels, concrete board and glass, are encouraged.

- *Height.* The maximum height of any element of a building shall be 8 stories or 100 feet. Structures shall vary in height in order to avoid the creation of a monolithic mass and to create a streetscape with an organic appearance. Material and height variations are encouraged to provide a visual break along each building's façade, as well as to create variations between buildings while still promoting a continuity of community. Each building or each structure composed of numerous attached buildings shall be limited to 25% of the building's or structure's footprint containing eight stories (including parking levels). 25% of each building or structure shall be required to contain

5 stories or less. The balance of the building or structure may vary in height between 5 and 7 stories in order to create an architecturally interesting design variation. Consideration of utilizing the tallest components in the western most portions of the site is encouraged to promote the consideration of site topography in the creation of view corridors. The scale of buildings and structures should be lowered as structures approach the waterfront in order to create an attractive tiered visual when the completed development is viewed via a perspective from the river.

- *Lighting*. Light fixtures attached to the exterior of a building shall be designed to be architecturally compatible with the style, materials, colors and details of such building and other lighting fixtures used on the site. Consideration shall also be given to the type of light source utilized and the light quality such sources produce. The type of light source used on buildings, signs, parking areas, pedestrian walkways and other areas of a site shall be the same or compatible.

- *Multiple uses*. A building with multiple storefronts or other multiple uses, no matter whether such uses are the same type of use or located on the same floor level, shall be unified through the use of architecturally compatible styles, materials, colors, details, awnings, signage, lighting fixtures and other design elements for all such storefronts or uses.

- *Multiple buildings*. A development plan that contains more than one building or structure shall be unified through the use of architecturally compatible styles, materials, colors, details, awnings, signage, lighting fixtures and other design elements for all such buildings or structures.

- *Prohibited materials*. The use of bare aluminum or other bare metal materials or exposed non-decorative concrete block as exterior building materials shall be prohibited. Brick veneer, thin-brick, EIFS and vinyl siding shall be prohibited along any street front. The use of shapes, colors, and other characteristics that create a jarring disharmony shall be avoided.

1.5 Landscaping Design Guidelines:

- *Landscaping*. The entire development shall be landscaped in accordance with a plan conceived as a complete pattern and style throughout the total site. All areas of the site not occupied by buildings and other improvements shall be planted with trees, shrubs, hedges, ground cover, and perennials and annuals. Landscaping shall be provided to achieve the following:

    - Preservation and enhancement, to the greatest extent possible, of existing natural features on the site, including vegetation and land forms;

- Assistance in adapting a site to its proposed development;
- Mitigation and control of environmental and community impacts from a development;
- Creation of an attractive appearance for the development, as viewed from both within the site itself and the surrounding area;
- Definition of yard areas and other open space;
- Energy conservation and micro-climatic control.

- *Other design elements*. The development plan shall incorporate landscaping with other functional and ornamental site design elements, where appropriate, such as the following:
  - Courtyards, plazas, alleys, seasonal waterfront “café” style outdoor dining patios, and similar public and semi-public open spaces;
  - Open-air performance areas oriented toward the waterfront. The performance area should be associated with a plaza that provides seating or viewing opportunities or exhibit space;
  - Waterfront clubhouses, beach clubs, marina related structures and marine terminals shall be architecturally compatible with the upland residential development while incorporating nautical themes and materials appropriate for the environment. Circulation to these elements shall be clearly defined through directional signage and the area should be inviting to residents of the Beach Club District and the greater region. Parking for these facilities shall be located in close proximity and in sufficient capacity to adequately serve the scale of the use;
  - Ground paving materials;
  - Paths and walkways;
  - Fences, walls and other screens;
  - Street and site furniture.

- *General standards*. The following general standards shall be used to prepare and review landscaping for any development plan.

    - Deciduous trees shall have a minimum caliper of two and one half inches at the time of planting. Evergreen trees shall be a minimum of six (6) feet in height at time or planting. Low-growing evergreen shrubs shall be a minimum of two-and-one-half (2½) feet in height at the time of planting. The size of other plantings shall depend on setting and type of plant material.

    - Plantings shall be watered regularly and in a manner appropriate for the specific plant material throughout the first growing season. All landscaped areas shall be well maintained and kept free of all debris, rubbish, weeds, tall grass, other overgrown conditions, and the storage of any equipment or materials.

    - The redeveloper shall be required to replace dead or dying plant material for a period of two years from the date of issuance of a final occupancy permit. If plant material is dead or dying during a planting season, it shall be replaced that same season. If plant material is dead or dying during a non-planting season, it shall be replaced as soon as is reasonably possible at the start of the next planting season.

- *Specific standards*. The following standards shall be used to prepare and review landscaping within the Beach Club District:

    - The interior area of all parcels shall be landscaped to enhance the site's aesthetic appearance, provide visual relief from monotonous appearance of extensive building and parking areas, and to provide shading. In open air parking lots, landscaped areas shall be provided in protected planting islands or peninsulas located within the perimeter of the parking lot and shall be placed so as not to obstruct the vision of motorists.

    - Benches, trash receptacles, kiosks, phone booths and other street or site furniture shall be located on-tract, and shall be positioned and sized in accordance with the functional need of such. Selection of such furniture shall take into consideration issues of durability, maintenance and vandalism. All such furniture shall be architecturally compatible with the style, materials, colors and details of buildings on the site.

    - Street trees shall be provided along all public streets within the Beach Club Overlay District Redevelopment Area. Street trees shall be planted

30 feet on-center, and shall have at least a 2½" caliper at the time of planting.

1.6 Exceptions:

The design standards contained herein shall be used as the City's presumptive minimum requirements for development in the Beach Club District and shall be considered an integral portion of the Beach Club District Redevelopment Plan. However, these guidelines and standards are not intended to restrict creativity, and, as such, a potential redeveloper may request that the guidelines and standards be modified or waived. These design standards consider and incorporate site design guidelines prepared by Landworks Collaborative dated October 2104. A copy of the design standards is attached as an appendix to this document. In the event the Landworks design guidelines and these design standards contain conflicting standards or language, this document shall prevail, however the redeveloper may appeal to the City's Planning Board. The Planning Board may grant a Redeveloper reasonable waivers or modifications from these design standards provided the Redeveloper demonstrates the following:

- The proposed design waiver or modification will not substantially impair the intent of the Beach Club District Redevelopment Plan;
- The proposed design waiver or modification is consistent with the City's normally acceptable engineering, planning and/or architectural practices;
- The proposed design waiver or modification will not have an adverse impact on the physical, visual or spatial characteristics of the overall development plan for the parcel or tract to be developed;
- The proposed design waiver or modification generally enhances the overall development plan for the tract;
- The proposed design waiver or modification will not have an adverse impact on the physical, visual or spatial characteristics of the existing streetscape and neighborhood in which such development is located or the Beach Club District;

- The proposed design waiver or modification generally enhances the streetscape of the Beach Club District and the surrounding neighborhood;

- The proposed design waiver or modification will not reduce the useful life or increase the cost of maintenance of the improvement to be modified or otherwise have an adverse impact on the long-term function of the development;

- The proposed design waiver or modification will not materially detract from the real property value of the development or adjacent or nearby properties;

- The proposed design waiver or modification will not present a substantial detriment to the health, safety and welfare of the neighborhood, community or citizens of the City of South Amboy.

These Design Standards may be amended from time to time in compliance with the requirements of law.

LANDWORKS
COLLABORATIVE

91 Prescott Street
Worcester, MA 01605
(508)-770-0660

Date: November, 2014

Manhattan Beach Club-South Amboy, NJ
Design Guidelines

PROJECT APPROACH
Visionary Community Planning & Design

The process of community planning has undergone substantial change in recent years particularly as it relates to the programming and development of key community assets. There is a much greater recognition of the need to include a diverse group of constituencies in both defining and designing major projects and development programs. Moreover, that inclusion process must be more creative, sincere and practical than has been the case in the past.

Seamless Integration of Planning, Design and Implementation

LANDWORK'S reputation among its many clients is that we are pragmatic problem solvers with a genuine talent to create high quality master plans that can guide the development of complex and difficult sites. To do so, we believe that planning, infrastructure and development are inextricably linked, and that successful projects integrate buildings, open space and circulation into a coherent whole; greater than the sum of it's parts. Working in harmony these master planned systems help to create and reinforce the desired character of the Manhattan Beach Club (MBC) - and subtly describe to residents how the streetscape is organized and how they are to use it. Additionally, when master planned systems work together the best characteristics of each program element are exhibited and resultant real estate values are enhanced. Our intent is to apply our skill as integrator of these elements to assure that the MBC-in its details, as well as the whole, convey the character and meaning implied in the Common Area Landscape/Streetscape Master Plan.

As experienced urban planners and designers, we have the ability to understand the entire project and the elements of the plan that are essential to the successful realization of the overall planning concept. This is especially important during implementation because we better understand the fundamental plan concepts which will need to be *protected* and which can remain *flexible.*

Our team's integrated planning/engineering capability will provide the technical inventory and foundation for business and engineering decision making on infrastructure commonly shared by streetscape and common area landscape elements. Phasing of infrastructure can best be determined through this master planning/engineering approach to help

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guide a multi-use, multi-year, the MBC implementation strategy where adequate public facilities must be shared, extended, or potentially created jointly for a stronger linkage/connection to existing transportation centers and South Amboy's Main Street.

Create a Unique Streetscape Identity

A fundamental objective for the Manhattan Beach Club (MBC) is to create a special environment that is uniquely responsive to the site and visionary in its character. We believe that this can be achieved by adopting design principles and guidelines that reflect the values of OPG and incorporate many of the physical and symbolic features that are commonly associated with Traditional Coastal New Jersey Villages and Towns. Both the project architecture and associated landscape systems should naturally grow out of the history and geography of South Amboy to insure its unique character and stand in sharp contrast to contemporary suburban development.

A good streetscape is one designed to achieve two fundamental and intimately interrelated objectives:

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1. By day and night, the physical design of the public space should maximize the safety, security, convenience and enjoyment of all that use it—citizens and visitors, drivers, pedestrians, bicyclists, shoppers and handicapped alike.

2. By day and night, the design of the space should create in the minds of those who use it the memorable image that it is a unique place to live. The space should reflect the values and aspirations of the MBC as well as the design heritage of Coastal NJ.

It is our thesis that these two objectives are not in conflict in any way, and that the achievement of the "*aesthetic*" objective of creating a positive image for the MBC streetscape is, in fact, an inevitable and automatic by product of achieving the "*functional*" objective of providing convenience, safety, security, and enjoyment for all users.

Many designers would approach this assignment of streetscape design for lighting, landscaping, and street furnishings by starting with their own personal visual image of "an identity" and then developing increasingly refined schemes and plans to sell the desired image. Our approach is exactly the opposite. We believe that if one can identify and solve for in a mutually consistent manner the unique needs of all the users of the space, then a positive image of the space will follow naturally.

The needs of the users are unique to each street within the MBC. Here again, many designers would approach functional solutions universally without understanding the specific needs of **The Park** and it's role in establishing a unique Streetscape Image and Character; Streetscape; the Coastal Boardwalk Feature and it's relationship to the Marina/Club Area. Aesthetically pleasing streets and associated plazas, squares and public spaces are almost always well designed in indigenous functional terms, regardless of the particular style in which they have been executed. The term functional implies both physical and psychological objectives, of course, and these objectives can be quite complex and difficult to achieve. When one has a good understanding of the functional problems to be solved and a clear picture of their relative priorities, then one has much of what one needs to design good streets and public spaces.

Once a consensus of streetscape elements and their functional roles within the MBC are understood, the following Common Area Landscape/Streetscape Elements can be developed in mutually supporting layers to create a unique and integrated landscape identity to the MBC.

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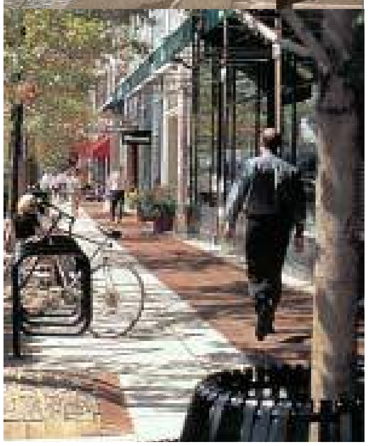

*Identification of key streets, plazas and other public spaces and their role within MBC:

- **<u>The Park</u>**/Fountain and other linear park elements
- Main Building Entries, parking areas and service requirements
- Perimeter waterfront parks/ boardwalks, landscape buffers
- Trail system and boardwalk design treatment
- Outer road landscape design
- Landscape design for the Conrail Parking lot, and existing NJ Transit Station
- Sidewalks widths and pedestrian zones
- Special vehicular and pedestrian pavements
- Typical corner and crosswalks configurations
- Curbs and curb ramps and cuts
- Street lights and special effects lighting
- Street trees, guards and grates
- Seating benches and bus shelters
- Public Art
- Kiosks
- Furnishings – utility accessories, trash receptacles, newspaper boxes, bicycle racks, bollards, planting pots and planters
- Storefront Guidelines (if required)

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1. STREET DESIGN:

    a. To establish a safe, convenient and attractive pedestrian oriented environment within the Manhattan Beach Club, the developer of any property shall be responsible for upgrading any existing substandard streets and other improvements within the existing designated public right-of-way or the primary private access easement fronting the lot if such street or easement is not built to the design standards of the district. The construction standards for the Manhattan Beach Club shall be incorporated in the subdivision regulations of the city and, where applicable, the developer shall be required to dedicate right-of way abutting the lot to the centerline of the road.

    b. When feasible or practical, the developer shall install the improvements as a part of the site development or redevelopment plan; however, recognizing that individual lots in the district will undergo redevelopment at various times over a period of years, the developer may be required by the planning commission to contribute sufficient funds to the city to pay for an equivalent share of improvements within a larger street improvement project.

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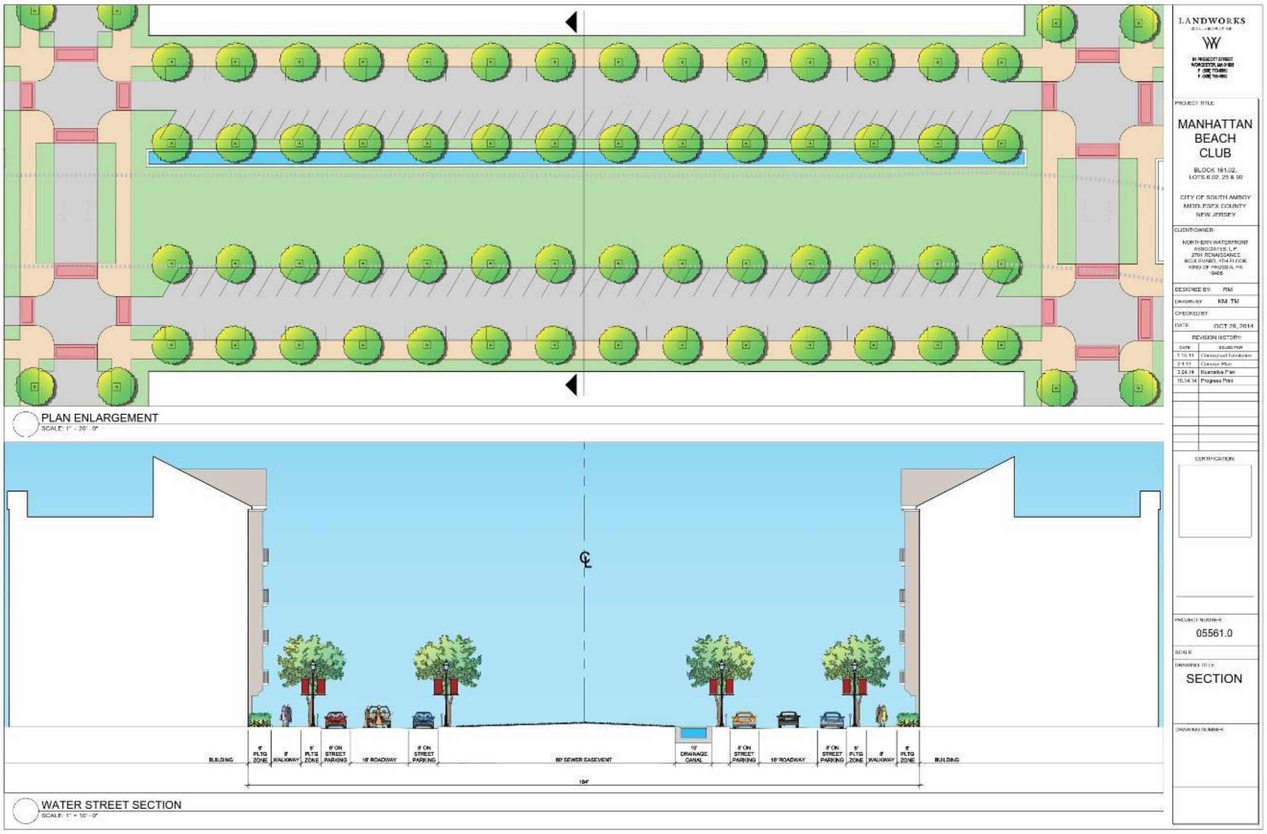

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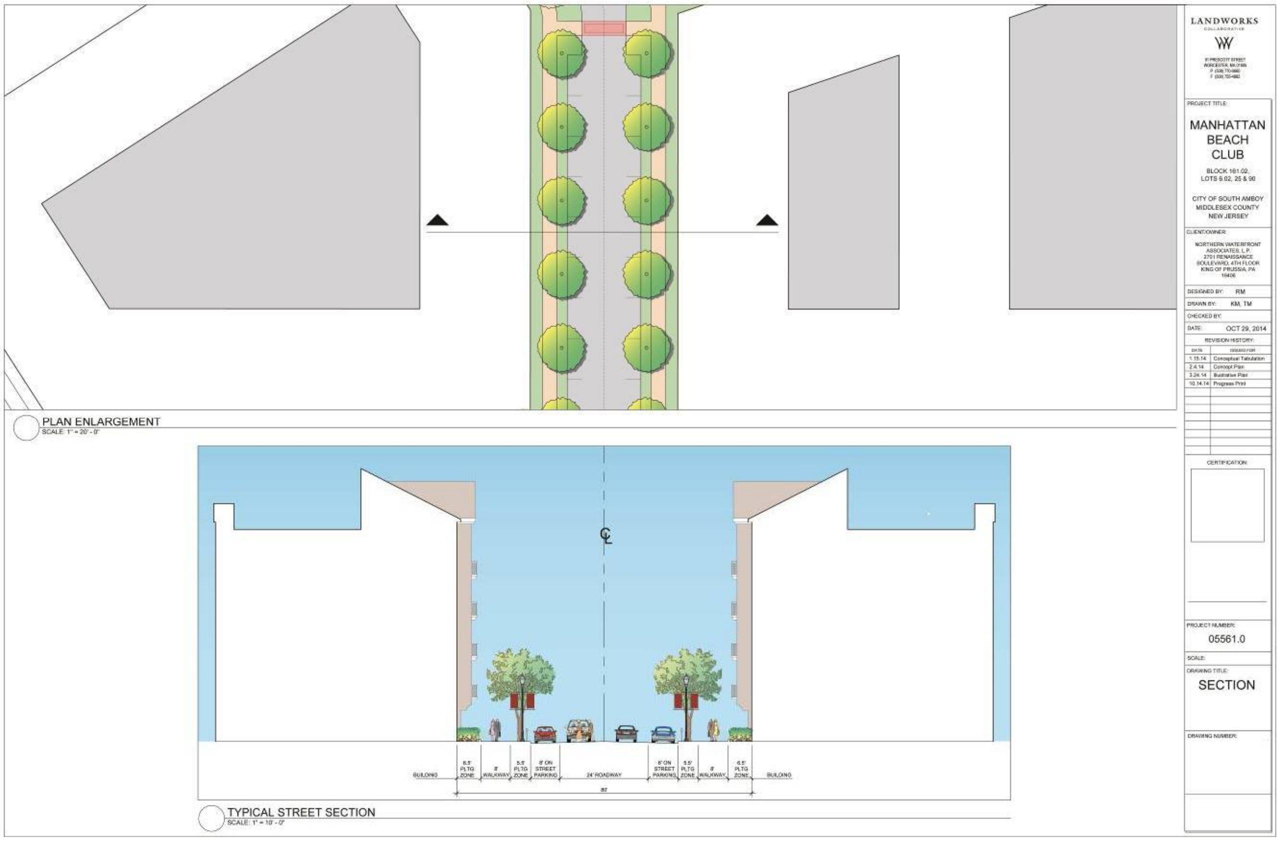

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2. PARKING:

a. On-site parking. The number, size and design of all parking spaces and internal access ways shall comply with the off-street parking requirements, except as follows:

1) On-site parking lots and loading areas shall be located to the rear or sides of buildings. In cases where the building fronts more than one street, the developer shall determine the principal frontage of the building.

2) The maximum grade in the parking and driveway areas shall be five percent.

3) The minimum pavement width of any driveway shall be 24 feet for two-way traffic and 15 feet for one-way traffic with angled parking spaces.

4) With the exception of designated passenger drop off areas and loading and unloading spaces, the minimum distance between any building and any internal driveway shall be ten feet, while the minimum distance between any building and any parking space shall be five feet.

5) Where feasible and practical, no surface parking lot should abut a street intersection.

6) On-site deck parking structures are encouraged where the topography is advantageous, provided the exterior finishes of the structure are compatible with the building.

7) Shared parking lots and joint access driveways that serve multiple businesses and land uses are encouraged and shall be located at the rear

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and/or side of the developments, with common access to the public streets. In such arrangements, the individual businesses may not reserve specific spaces within the lot by signs or other methods.

8) Designated parking spaces for any residential dwellings shall be located on the same lot with a minimum requirement of one parking space per residence. Such spaces may be reserved by signs or other methods.

9) The planning commission may waive the requirement for individual loading areas to serve each lot if an acceptable plan and location for the loading and unloading of materials and merchandise is provided.

3. SIDEWALKS:

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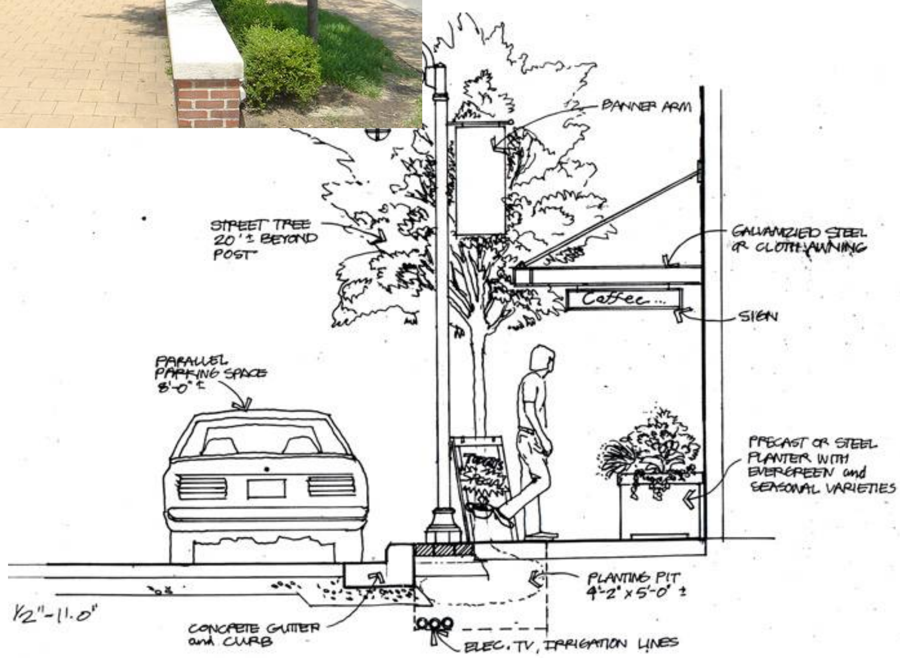
a. Sidewalks shall be constructed in the right-of-way on both sides of the streets serving the district with a minimum width of ten feet from the back of curb.



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4. OUTDOOR LIGHTING:

a. Street. To maintain adequate visibility for pedestrians and drivers at night and to provide a distinct identity within the Beach Club District, the developer or property owner shall install ornamental street lighting in the area of the development fronting a public street. The lighting shall be installed to a uniform design standard for the district. The poles shall be no greater than 16 feet in height and located in the sidewalk behind the curb at intervals sufficient to prevent excessive dark spots for pedestrians and drivers.

b. Lot area. Adequate outside lighting shall be provided to cover private parking areas and other open areas on the rear and side areas of the lot. Such lighting shall be designed for security purposes but shall be arranged to minimize unnecessary glare and reflection on adjacent lots and public streets.

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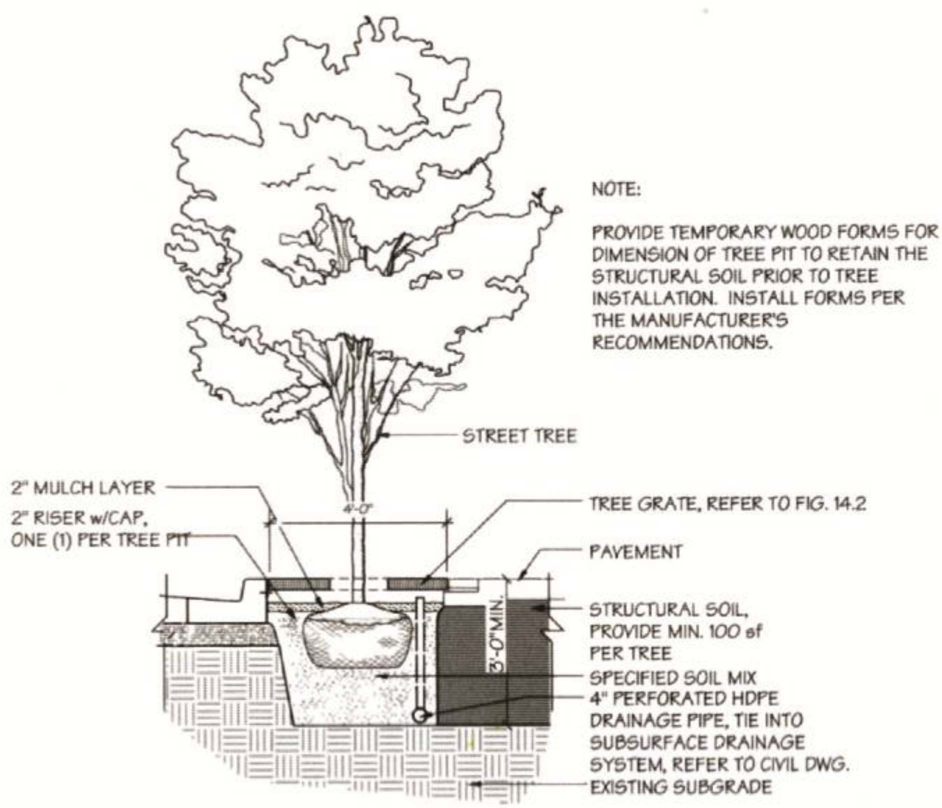
5. LANDSCAPING / BEAUTIFICATION

a. Street trees. Trees shall be planted in the sidewalk area in designated tree wells or tree/planting beds in front of the building between the street curb and the travel zone of the sidewalk at a spacing of every 30-40 linear feet. Each street tree shall INSTALLED PER THE MANUFACTURER'S RECOMMENDATIONS; be planted in topsoil or structural soils with a minimum of one hundred square feet of surface area and a minimum depth of three feet for the root zone. The location and placement of street trees shall be coordinated in a manner as to not interfere with street lighting. Trees which are in the public right-of-way or pedestrian paths of travel shall also comply with any ADA clearance requirements, both at grade and at the tree canopy. The trees shall be suitable for urban conditions and provide minimum interference to the operation of businesses, pedestrian use of the sidewalk and the effectiveness of street lighting. A power source shall be provided for seasonal lighting and/or for up-lighting of the trees



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Cercis canadensis – Eastern Redbud

Prunus semulata – Kwanzan Cherry

Acer saccharum – Sugar Maple

Linden

Sycamore

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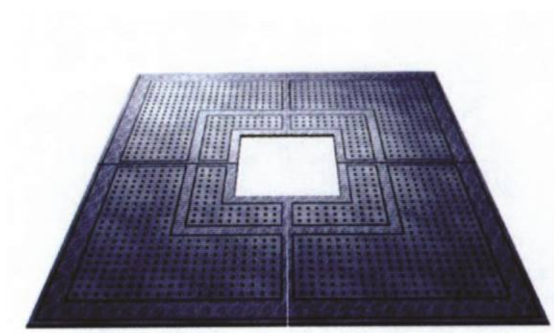
b. Street furniture. Developer to provide benches, trash receptacles, bollards, and/or bicycle racks to serve the business on the right-of-way abutting the business.

c.



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d. Landscaping. Attractive low maintenance landscaping geared to scale of development at the Manhattan Beach Club shall be incorporated into the designated open space and parking areas (not including areas within the footprint of buildings) of the lot to the greatest extent feasible. Acceptable plantings shall include trees planted in locations with sufficient growing space to reach full maturity, hedges, flower beds, planters, fountains, etc. An irrigation system may be provided to ensure long-term survival of the plantings.

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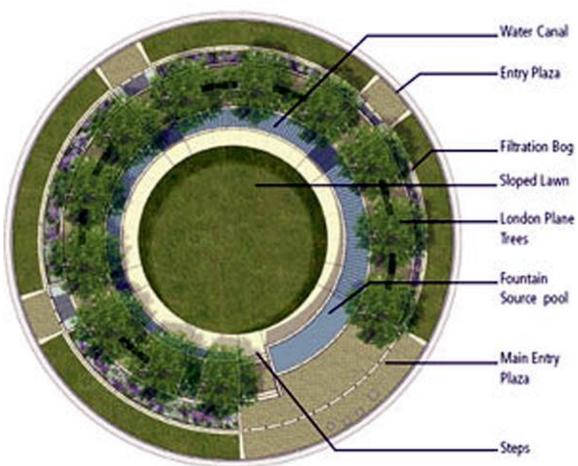
6. ROUND-ABOUTS

    a. (unfinished)



Uptown Circle Plan Image by Hoerr Schaudt

7. MEDIAN TREATMENT

    a. (unfinished)

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8. URBAN GARDENS

a.

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9. SIGNAGE:

The visual transfer of business advertising and other information through the use of external signs at the Manhattan Beach Club shall comply with the sign regulations with the following exceptions:

a. Wall signs shall be mounted flat against the facade of the building. The location, design and materials shall be approved by the planning commission as a part of the site plan approval process. Backlit, active LED and Reading Board signs shall be prohibited.

b. For the benefit of pedestrians, an additional sign not to exceed eight square feet shall be permitted. The sign may be suspended from the canopy or balcony, or bracketed from the building over the sidewalk near the main entrance to each business. Such signs shall not be internally illuminated, and shall have a minimum clearance 7.5feet from the sidewalk

10. VEHICLE ACCESS CONTROL:

The location and design of all driveways and accesses that allow vehicles to enter public streets from any lot developed in this zoning district shall comply with vehicle access control regulations, however, in recognition of a more compact arrangement of mixed use development in the district, the planning commission may grant exceptions to the technical standards related to minimum distances of driveways from intersections and property lines and minimum radius of driveway curves. The use of shared driveways and rear service lanes to access public streets shall be encouraged to the greatest extent feasible and practical. Service entrances and overhead doors shall not be permitted to face or access a public street directly.

11. EROSION CONTROL & STORM WATER MANAGEMENT:

The control of erosion during development and the design of drainage systems suitable to handle the additional storm water runoff after the site is developed shall comply with the requirements and the subdivision regulations of the city and the Freehold Soil Conservation District.

12. UTILITY PROVISIONS:

All developments shall be served by public sanitary sewer and water lines of a minimum eight inches and six inches, respectively, with actual sizing and other technical requirements for connection to public utilities subject to approval by the appropriate agency. All new electric, telephone and similar distribution lines and wiring serving the district shall be installed underground. The placement of any utilities within the public sidewalk shall be coordinated with the locations of proposed street trees.

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South Amboy – Site Design Requirement Meetings

Off Street Parking/Road Grid
1. All streets will be private until development is complete. At completion, could be dedicated to the City of South Amboy.
2. Building face to building face is a minimum of 80'ft. This minimum requirement does not include Building face to face distance within a Phase.
3. On street parking will be permitted.
4. Landworks to provide design detail for sidewalk width and landscaping. Detail to include relationship to street intersection/crossing.
5. Landworks to provide section detail for four (4) different types of street intersection shown: Boulevard, perpendicular, parallel both sides & parallel one side.
6. Traffic report to include analysis of the three types of intersections and the respective vehicular movement. If shared parking is proposed, the traffic report will show support for such arrangement.

Building Materials
1. Acceptable building material are: cultured stone, brick, fiber cement, pre-cast stone. No EFIS, thin set brick panels or vinyl.
2. Building will not be required to be LEED certified.
3. Windows – variety of styles & colors (vinyl single & double hung, fixed and encasements windows).
4. Recessed balconies with some Juliet's. Decorative railing to be provided

Building Amenities
1. Each building will have its own self-contained amenities such as: leasing center, fitness & yoga room, club room, dining room, lounge/social area.
2. Up to 4 electric car charging stations will be provided per phase.

Site/Landscaping and Public Spaces
1. Green areas as open space – water feature, urban garden @ public scale.
2. Sidewalks and cross walks.
3. Concrete and/or brick pavers.
4. Belgium block or concrete curbing.
5. Furniture/Benches
6. Bike racks.
7. Street lighting – provide preferred cut sheet on fixture to be used. Metal Halide or LED.

Fire Department/Life Safety
1. Need Fire Marshall approval of maneuverability plan.
2. Fire lanes – are they required? Follow up with Fire Marshall.

EXHIBIT E

Schedule

EXHIBIT F

Ownership Structure

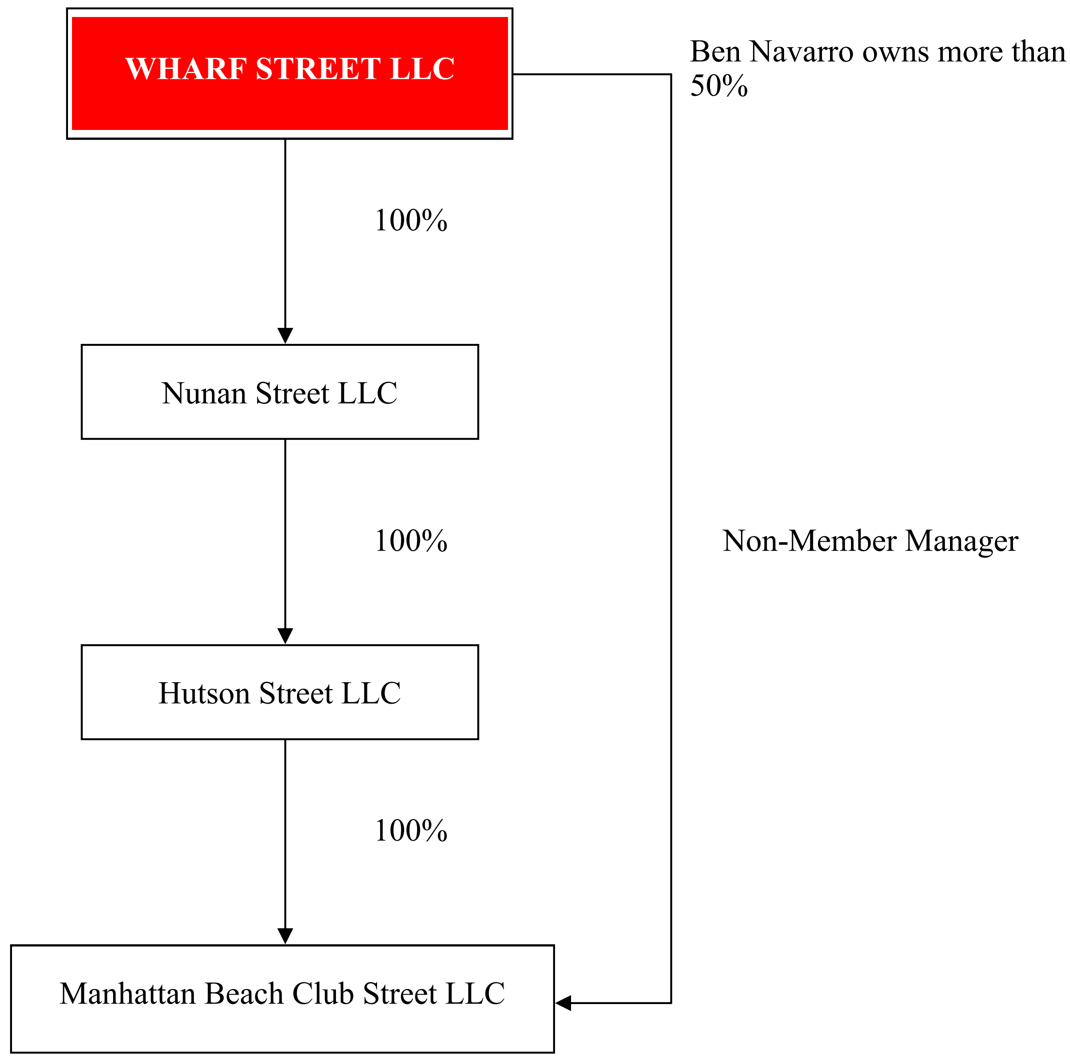


EXHIBIT G

Beach Club District Redevelopment Plan

EXHIBIT H

Public Improvement Easements

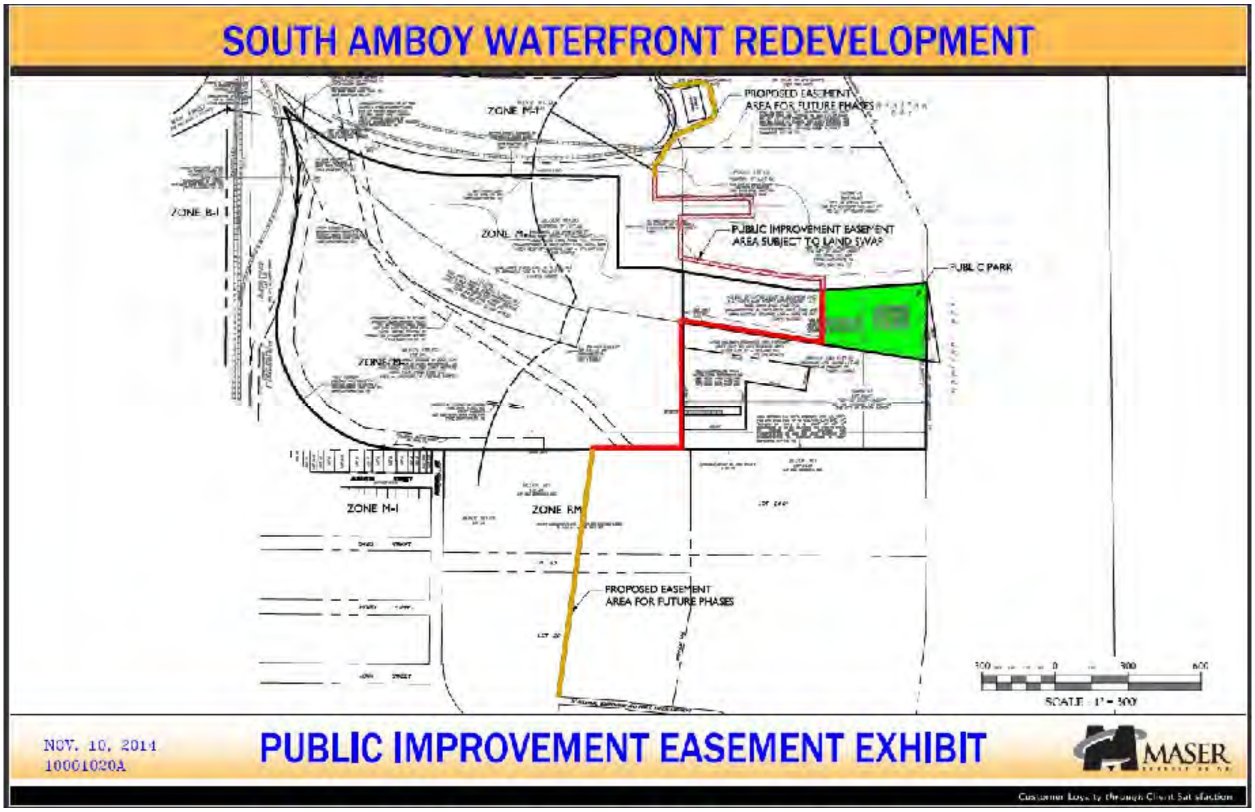
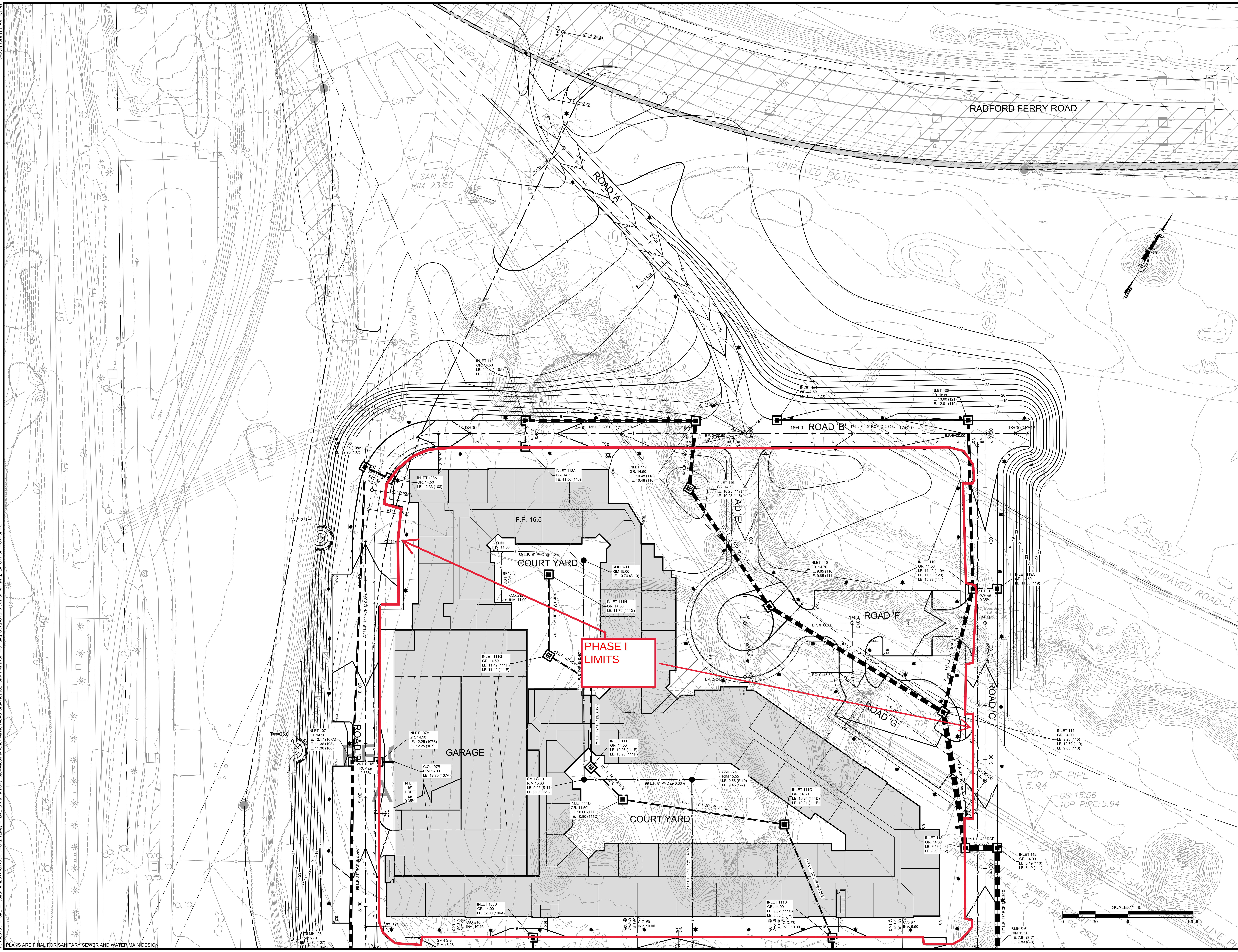


EXHIBIT I

Component 1 Parcel



PRELIMINARY AND FINAL MAJOR SITE PLANS FOR

BNE SOUTH AMBOY

GRADING & DRAINAGE PLAN

BLOCK 161.02, LOTS 6.03, 6.04, 90

CITY OF SOUTH AMBOY , MIDDLESEX COUNTY, NEW JERSEY

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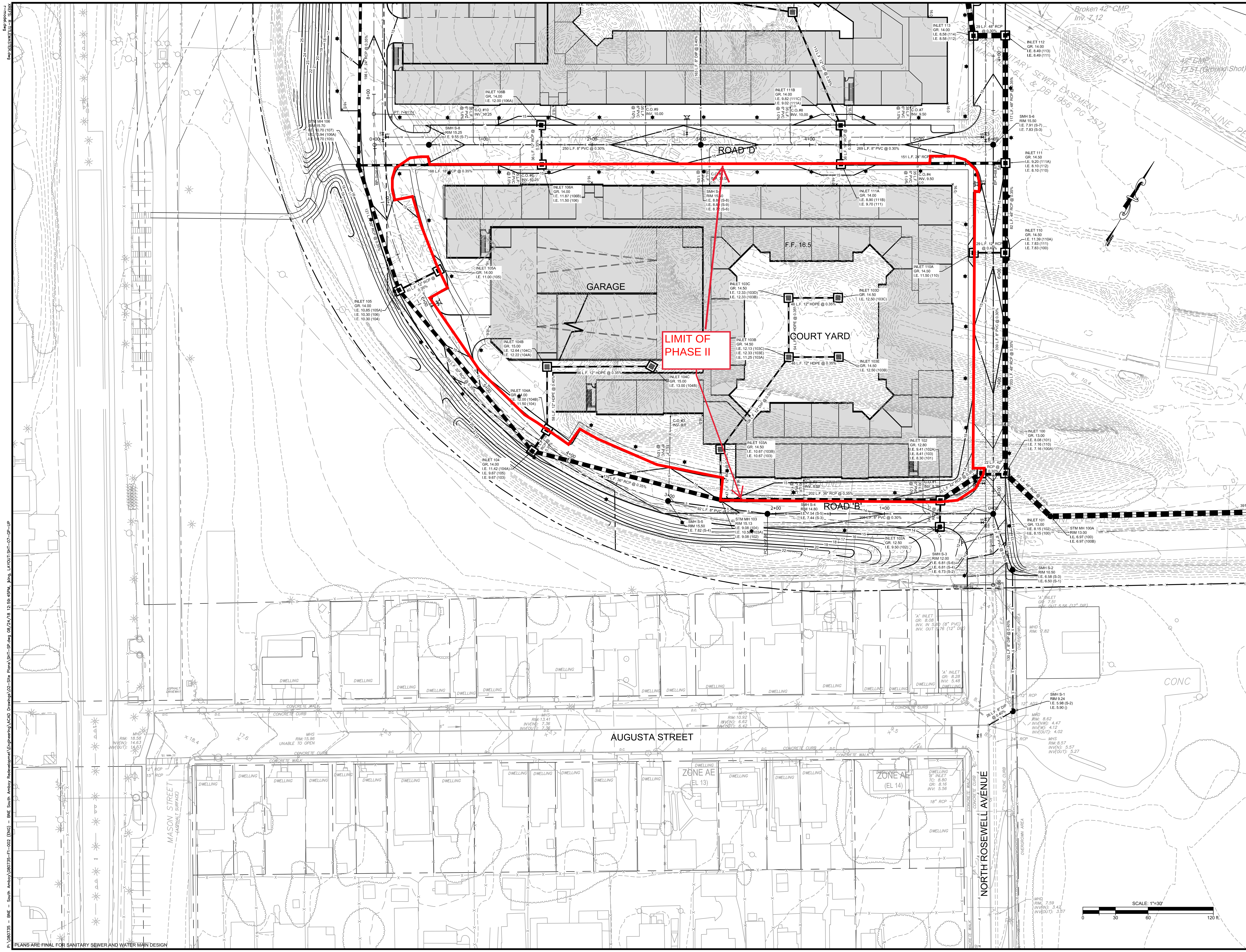
6
OF
27

EXHIBIT J

Component 2 Parcel



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PRELIMINARY AND FINAL MAJOR SITE PLANS FOR

BNE SOUTH AMBOY

GRADING & UTILITIES PLAN

BLOCK 161.02, LOTS 6.03, 6.04, 90

CITY OF SOUTH AMBOY , MIDDLESEX COUNTY, NEW JERSEY

SHEET No. 7 OF 27