

REDEVELOPMENT AGREEMENT

THIS AGREEMENT (this “**Agreement**”) is entered in to as of the ____ day of December, 2018 (the “**Effective Date**”) by and between the **BOROUGH OF KEYPORT**, a municipal corporation and body politic of the State of New Jersey, having its offices at 70 West Front Street, Keyport, New Jersey 07755 (the “**Borough**”), and **MARINER’S VILLAGE AT KEYPORT URBAN RENEWAL, LLC**, an urban renewal entity authorized to do business within the State of New Jersey, and having a business office located at and a mailing address of 2601 Biscayne Boulevard, Miami, Florida 33137 (“**Redeveloper**”, and together with the Borough, the “**Parties**”).

RECITALS

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended from time to time (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment and/or rehabilitation; and

WHEREAS, on August 4, 2015, the Municipal Council (the “**Council**”) of the Borough adopted a resolution designating the property commonly known as Brown’s Point Marina and identified as Block 20, Lots 5, 6, 6.01, 7, and 9 on the tax map of the Borough of Keyport, State of New Jersey, as further described in *Exhibit A*, as a non-condemnation redevelopment area (the “**Initial Redevelopment Area**”) in accordance with the Redevelopment Law; and

WHEREAS, after a re-investigation by the planning board of the Borough (the “**Planning Board**”) in accordance with the Redevelopment Law, in or about April, 2016, the Borough adopted a resolution designating the certain properties in the vicinity of Brown’s Point Marina and identified as Block 20, Lots 1, 2, and 3 on the tax map of the Borough of Keyport, State of New Jersey, as further described in *Exhibit A*, as a non-condemnation redevelopment area (together with the Initial Redevelopment Area, the “**Redevelopment Area**” or the “**Property**”); and

WHEREAS, on May 16, 2017, after the review and approval by the Planning Board, the Borough Council adopted an ordinance approving the Brown’s Point Marina Redevelopment Plan prepared by the Borough’s Planner, CME Associates (the “**Redevelopment Plan**”) for the Redevelopment Area; and

WHEREAS, Redeveloper has submitted itself for consideration by the Borough for designation as the redeveloper of the Redevelopment Area and the Borough Council recognizes the credentials, experience and financial capability of Redeveloper to design and construct the Project (as defined herein); and

WHEREAS, *N.J.S.A. 40A:12A-8* of the Redevelopment Law authorizes the Borough to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area in need of redevelopment or rehabilitation; and

WHEREAS, the Parties seek to memorialize the rights and obligations of one another relating to the development of the Project (as defined herein) in the Redevelopment Area.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows.

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1 Governing Law. This Agreement shall be governed by the provisions of (a) the Redevelopment Law and such other statutes as may be the sources of relevant authority and (b) all other Applicable Laws (as defined herein).

SECTION 1.2 Definitions. Words that are capitalized, and which are not the first word of a sentence, are defined terms. The following terms shall have the meanings assigned to such term in the preambles hereof:

Agreement
Borough
Council
Effective Date
Initial Redevelopment Area
Parties
Property
Redeveloper
Redevelopment Area
Redevelopment Law
Redevelopment Plan

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

“**Affiliate**” means 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. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean 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.

“**Applicable Law(s)**” shall mean all federal, State and local laws, statutes, ordinances, approvals, rules, regulations, common law, resolutions and requirements applicable hereto including, but not limited to, the Redevelopment Law, the Land Use Law, as applicable, relevant construction codes including construction codes governing access for people with disabilities,

and such zoning, sanitary and safety ordinances, laws and such rules and regulations thereunder, including all applicable federal and State labor standards and all Environmental Laws.

“**Borough Code**” shall mean the Code of General Ordinances of the Borough.

“**Borough Costs**” shall be as defined in Section 5.1(b).

“**Borough Indemnified Parties**” shall the Borough and its officers, agents, Affiliates, employees, contractors, and consultants and their respective successors and assigns.

“**Borough Representative**” shall mean the Business Administrator of the Borough or his designee.

“**Certificate of Completion**” shall mean a certificate in the form attached hereto as *Exhibit B*, issued by the Borough at such time or times as, in its reasonable determination, all work related to the Project in its entirety, has been Completed, acquired and/or installed in accordance with this Agreement.

“**Certificate Denial Statement**” shall be as defined in Section 2.3(f).

“**Certificate of Occupancy**” shall mean a temporary or permanent certificate of occupancy as defined in the applicable provisions of the Uniform Construction Code, issued by the Borough building department.

“**Claims**” shall mean any and all liabilities (statutory or otherwise), obligations, claims, damages (including condemnation damages and abandonment damages by third parties other than the Borough), causes of action, proceedings, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements and court costs), losses and injuries.

“**Commence**” or “**Commencement**” shall mean the mobilization of a construction force and/or machinery for the construction of the Project.

“**Complete**” or “**Completion**” shall mean with respect to the Project or Property, the date that the Project may, in all material respects, be used and operated for its intended purpose provided that: all of the applicable provisions of this Agreement have been met, and the Borough has received a written certificate from Redeveloper affirming that such Project is complete.

“**Completion Date**” shall be as defined in Section 2.3(c).

“**Declaration**” shall be as defined in Section 7.3.

“**Default Notice**” shall be as defined as in Section 13.1(a).

“**Environmental Laws**” shall mean any and all Applicable Laws, federal, State, county or local statutes, ordinances, rules, regulations, guidance documents, enforcement guidance memorandums, directives, and administrative orders, and the common law concerning the

protection of the environment, human health or safety, presently in effect, including, without limitation, the Site Remediation Reform Act, *N.J.S.A. 58:10C-1 et seq.* (“**SRRA**”), the New Jersey Spill Compensation and Control Act, *N.J.S.A. 58:10-23.11 et seq.* (the “**Spill Act**”); the Industrial Site Recovery Act, *N.J.S.A. 13:1K-6 et seq.* (“**ISRA**”); the New Jersey Freshwater Wetlands Protection Act, *N.J.S.A. 13:9B-1 et seq.*; the New Jersey Hazardous Substances Discharge Reports and Notices Act, *N.J.S.A. 13:1K-15 et seq.*; the New Jersey Underground Storage of Hazardous Substances Act, *N.J.S.A. 58:10A-21 et seq.*; the New Jersey Water Pollution Control Act, *N.J.S.A. 58:10A-1 et seq.*; the New Jersey Solid Waste Management Act, *N.J.S.A. 13:1E et seq.*; the Brownfield and Contaminated Site Remediation Act, *N.J.S.A. 58:10B-1 et seq.*; the New Jersey Sanitary Landfill Facility Closure and Contingency Fund Act, *N.J.S.A. 13:1E-100 et seq.*; the Comprehensive Environmental Response Compensation and Liability Act, 42 *U.S.C. §9601 et seq.* (“**CERCLA**”); the Resource Conservation and Recovery Act, 42 *U.S.C. §6901 et seq.*; the Solid Waste Disposal Act, 42 *U.S.C. §6901 et seq.*; the Clean Air Act, 42 *U.S.C. §7401 et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 *U.S.C. §1100 et seq.*; the Safe Drinking Water Act, 42 *U.S.C. §300 et seq.*; the Pollution Prevention Act of 1990, 42 *U.S.C. §13101 et seq.*; the Clean Water Act, 33 *U.S.C. §1251 et seq.*; the 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 et seq.* the Technical Requirements for the Remediation of Contaminated Sites, *N.J.A.C. 7:26E-1.1 et seq.*; the Administrative Requirements for the Remediation of Contaminated Sites (the “**ARRCS Rule**”); the Remediation Standards, *N.J.A.C. 7:26D-1.1 et seq.*, the Groundwater Quality Standards, *N.J.A.C. 7:9C-1.1 et seq.*, the Surface Water Quality Standards, *N.J.A.C. 7:9B-1.1 et seq.*, and the NJDEP Vapor Intrusion Guidance Document, together with, in each case, all other accompanying regulations, guidance documents, and enforcement directives as they may be modified from time to time.

“**Escrow Account**” shall be as defined in Section 5.1(b).

“**Event of Default**” shall be as set forth in Section 13.1.

“**Force Majeure**” shall be as defined in Section 13.3.

“**Foreclosure**” shall be as defined in Section 5.3(d).

“**Governmental Applications**” shall mean the applications, including all plans, drawings, documentation and presentations necessary and appropriate in support thereof, for the purpose of obtaining any and all Governmental Approvals.

“**Governmental Approvals**” shall mean all government approvals by a Governmental Body having jurisdiction thereof issued as a result of or in reliance on Governmental Applications, including, without limitation: with respect to the development of the Project, an approved site plan submitted to, and approved by, the Planning Board in accordance with the Land Use Law; approvals for all Infrastructure Improvements, Project Improvements, and NJDOT approvals; and any plans and specifications for the obtaining of building permits, for sewerage capacity approvals, and any and all other necessary governmental permits, licenses, grants, consents and approvals.

“**Governmental Body**” means any federal, State, county or local Borough, department,

commission, authority, court or tribunal and any designee or successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government, including without limitation, the Borough and State.

“**Holder**” shall be as defined in Section 5.3(a).

“**Infrastructure Improvements**” shall mean the preparation and installation on, in, under and to the Property any on-site or off-site infrastructure required by the Planning Board as a condition of land use approvals, if any.

“**Land Use Law**” shall mean the New Jersey Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*

“**Minority**” shall be as defined in Section 9.2(a).

“**NJDEP**” shall mean the New Jersey Department of Environmental Protection.

“**NJDOT**” shall mean the New Jersey Department of Transportation.

“**Permitted Transfers**” shall be as defined in Section 12.2.

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

“**Progress Report**” shall be as defined in Section 2.4(b).

“**Project**” shall be as defined in Section 2.1(a).

“**Project Costs**” shall be as defined in Section 5.1(a).

“**Project Improvements**” means all buildings, structures, improvements and amenities for the implementation and completion of the Project which is to consist of the construction of up to 120 residential, rental units, an integrated parking facility, a public kayak launch, a public bike share station and bike rack, a jitney bus service for residents, and any additional work incidental thereto and/or such work as maybe required in connection with permits and approvals, including Infrastructure Improvements, all of which shall be consistent with the Redevelopment Plan and any approved site plan.

“**Project Schedule**” shall mean the schedule for the development, construction and Completion of the Project, as the same may be amended or modified from time to time by the Parties. The Project Schedule is attached hereto as *Exhibit C*.

“**State**” shall mean the State of New Jersey.

“**Third Party Approvals**” shall mean those approvals granted by a third party that is a

not a Governmental Body, which approvals are necessary in connection with the implementation of the Project.

“**Transfer**” shall be as defined in Section 12.1.

“**Uniform Construction Code**” shall mean the Uniform Construction Code, *N.J.A.C. 5:23-1.1 et seq.*, as same may be amended from time to time.

“**United States Bankruptcy Code**” means the United States Bankruptcy Code, 11 *U.S.C. 101 et seq.*, and the accompanying regulations.

SECTION 1.3 Interpretation and Construction. In this Agreement, unless the context 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” means after, and the term “heretofore” means before the Effective Date.

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

(c) Unless otherwise noted, the terms “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation.”

(d) The terms “agree,” “agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld, conditioned or unduly delayed,” except or unless the context or the express terms of this Agreement may otherwise provide, specify or dictate.

(e) 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. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(f) 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.

(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 thirty (30) days, unless the context dictates otherwise.

(h) All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

(i) Each right or obligation of a Party to review or approve any actions, plans, specifications, or other obligations hereunder shall be made by a person with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a prompt and timely manner.

(j) Unless otherwise indicated, any “costs, fees and expenses” shall be required to be actual, out of pocket, necessary, customary and reasonable.

(k) Any reference to Applicable Laws or any Applicable Law shall be read to mean as the Applicable Law is amended from time to time.

ARTICLE II

DESIGNATION OF REDEVELOPER/IMPLEMENTATION OF THE PROJECT

SECTION 2.1 (a) The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Property. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Property as permitted in the Redevelopment Plan. Further, the Borough agrees that, absent a Default by Redeveloper, it will not negotiate or entertain for the provision of another redeveloper or developer for the Property or any portion thereof.

(b) **Description of the Project.** Redeveloper agrees, at its sole cost and expense, to implement and complete the redevelopment of the Property which shall consist of the following: (i) the financing, design, construction and completion of all Project Improvements and (ii) the payment of the Borough Costs in accordance with the terms of this Agreement (collectively, the “**Project**”). All activities performed under this Agreement shall be provided in accordance with the level of skill and care ordinarily exercised by developers of similar commercial developments.

(c) The Project shall be constructed consistent with this Agreement, the Redevelopment Plan and Applicable Law.

SECTION 2.2 Term. This Agreement shall terminate on the earlier of: (i) ten (10) years from the Effective Date subject to (a) any extension by reason of a Force Majeure event in accordance with Section 2.5, (b) any extension granted by the Borough, or its successor, in its sole discretion pursuant to a request of Redeveloper; (ii) the issuance of the Certificate of Completion; or (iii) the exercise by either Party of its right to terminate pursuant to Section 13.2 herein based upon the occurrence of an Event of Default, which Event of Default is not timely cured as set forth in this Agreement.

SECTION 2.3 Project Schedule. The Project Schedule shall control the Commencement, progress and Completion of the Project. Subject to the provisions of Section

2.5, Redeveloper shall use commercially reasonable efforts, subject to obtaining Governmental Approvals, to Commence construction no later than the date set forth in the Project Schedule.

(a) Redeveloper may modify the Project Schedule from time to time; provided that, (i) any such modification shall not change the construction Commencement date or the Completion Date for the Project without the prior written consent of the Borough, which consent shall not be unreasonably withheld, and (ii) any material changes to the Project Schedule shall be subject to the Borough's review and approval.

(b) Subject to the provisions of Section 2.5, Redeveloper shall use all diligent effort to Complete the Project in accordance with the Project Schedule.

(c) Upon Completion, Redeveloper shall apply to the appropriate Governmental Body for a Certificate of Occupancy. The date when Redeveloper has achieved the Completion of the Project (the "**Completion Date**") shall be the date Redeveloper has obtained a Certificate of Occupancy for all of the Project Improvements.

(d) If, subject to the provisions Section 2.5, Redeveloper fails to meet the Completion Date for any reason or determined that it will fail to meet the Completion Date for any reason, Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure or anticipated failure to meet the Completion Date, (ii) Redeveloper's proposed method for correcting such failure, (iii) Redeveloper's proposal for revising the applicable Completion Date and (iv) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant Completion Dates. In such event the Borough may, in its sole but reasonable discretion, consent to the modification of the Completion Date. If the Borough does not so consent and Redeveloper fails to meet the Completion Date, then Redeveloper shall be in default hereunder.

(e) If Redeveloper has performed all of its duties and obligations under this Agreement and Completed the Project, the Borough shall, within thirty (30) days of the Completion Date and receipt of a written request from Redeveloper, issue a Certificate of Completion. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement, the Redevelopment Plan and Applicable Laws, with respect to the obligations of Redeveloper to construct the Project, as applicable.

(f) In the event the Borough does not issue the Certificate of Completion, as applicable, within thirty (30) days after submission of written request by Redeveloper, the Borough shall provide Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project in accordance with the provisions of this Agreement, the Redevelopment Plan and Applicable Laws and what measures or acts the Borough deems will be necessary in its reasonable opinion in order for Redeveloper to be entitled to the applicable Certificate of Completion (the "**Certificate Denial Statement**"). Redeveloper may rely on the Certificate Denial Statement in determining what action it must take in order to achieve the requested Certificate of Completion.

(g) Upon the issuance and recording of the Certificate of Completion, the conditions determined to exist at the time the Property was determined to be an area in need of redevelopment shall be deemed to no longer exist with respect to the Project and Property. The Project and Property shall no longer be subject to any covenant running with that portion of the land covered by the applicable Certificate of Completion.

SECTION 2.4 Project Oversight. (a) At the request of the Borough, Redeveloper agrees to hold a reasonable number of regular progress meetings (which the parties expect to be no more than quarterly unless the Borough reasonably requires more frequent meetings) upon the Borough's reasonable request, to report on the status of the Project and to review the progress under the Project Schedule. The meetings shall be held within five (5) business days of Redeveloper's receipt of the Borough's request for such a meeting, at such office as is maintained by Redeveloper in the Borough, as designated by Redeveloper, or at Borough Hall. The Borough Representative may visit the Project to inspect the progress of the work on the Project at reasonable times subject to reasonable advance notice and without undue interference with the Project progress, and in strict conformance to all Applicable Laws.

(b) Upon the request of the Borough, Redeveloper shall submit to the Borough detailed written progress reports (but not more frequently than quarterly) which shall include a description of activities completed, the activities to be undertaken prior to the next Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and Completion Dates in the Project Schedule, an explanation of corrective action taken or proposed and such other information as may be requested by the Borough (collectively, the "**Progress Report**", to be submitted in the form attached hereto as *Exhibit D*).

(c) The Borough and the Borough Representative reserve the right to enter upon the Property, upon reasonable notice to Redeveloper and during business hours, to visually inspect the site for informational purposes, subject to the Borough's acknowledgment that the Property will be an active construction site and Redeveloper shall not be liable or responsible to the Borough, its employees, agents or invitees for damages arising from injury to person or property sustained in connection with such inspections except to the extent that Redeveloper violates the standard of due care owed to invitees. Such inspections and observations shall not relieve Redeveloper from its obligation to implement the Project. In no event shall the Borough's inspection of the Project under this Section 2.4(c) be deemed acceptance of the work or deemed to waive any right the Borough has under this Agreement. Permit officials shall be permitted to enter the Property at any time, pursuant to Applicable Law.

(d) The Borough shall have the right at all reasonable times upon reasonable request, notice and execution of a confidentiality agreement, to inspect, at the offices of Redeveloper, the following: the construction contracts, construction performance security, insurance policies, and such other agreements of Redeveloper which are pertinent to the purposes of confirming Redeveloper's compliance with this Agreement.

SECTION 2.5 Tolling. Redeveloper shall diligently adhere to the Project Schedule and the provisions set forth in this Article II, provided that such obligations shall be extended on a day-for-day basis for each day that Redeveloper's performance hereunder is delayed by (a) the occurrence of an event of Force Majeure or (b) an extension of the date for Completion granted by the Borough, in its sole but reasonable discretion, pursuant to Section 2.3(d). If a delay only affects a portion of the Project, the extension granted hereunder shall only apply to the obligations so affected and Redeveloper shall continue to perform its obligations with respect to the balance of the Project.

SECTION 2.6 Infrastructure Improvements. Redeveloper will design and construct the Infrastructure Improvements in a good and workmanlike manner and materially in accordance with all Applicable Laws, as applicable. Redeveloper acknowledges the presence of certain existing utility structures, including but not limited to electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities, and agrees to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and easements therefor, in order to complete the Project as provided by this Agreement. Site plan approval may be conditioned upon other on-site and off-site improvements specific to the Project, consistent with the authority of the Planning Board and consistent with the Land Use Law. Redeveloper agrees to provide performance and maintenance bonds as required by the Planning Board, consistent with the authority of the Planning Board under the Land Use Law. The Borough makes no representation that the necessary infrastructure to support the Project exists at the Site; any infrastructure needed for the Project is to be constructed at Redeveloper's sole cost and expense. Notwithstanding the foregoing, the Borough agrees that Redeveloper will be entitled to a credit against the sewer connection fees and water connection fees for all existing units on the Property, and payment of such fees by Redeveloper shall not be required until after Completion and occupancy of the Project. There shall be no other impact fees or fees of any kind imposed upon Redeveloper.

SECTION 2.7 Prohibition Against Suspension, Discontinuance or Termination. Redeveloper shall not suspend or discontinue its performance of its obligations under this Agreement or terminate this Agreement (other than in the manner provided for herein) for any reason except to the extent permitted by Section 2.5, and then only to the extent and for the period of time permitted by Section 2.5.

SECTION 2.8 Cooperation. The Parties shall fully cooperate with each other as necessary and desirable to accomplish the Project.

SECTION 2.9 Public Access and Amenities. The Redeveloper agrees to grant access and use to the public and to the Borough of (a) the waterfront portions of the Redevelopment Area, including a kayak launch; and (b) the bike share station and bike rack to be installed in the Redevelopment Area. Upon issuance of the first Certificate of Occupancy for the Project, the Redeveloper agrees to contribute an amount equal to \$36,000.00 to fund the installation of additional public waterfront amenities or to such other public amenity as the Parties may designate. In accordance with Applicable Laws, the Parties agree to execute any documents or agreements necessary or required to effectuate this Section 2.9.

ARTICLE III
REDEVELOPER'S RIGHT TO PROPERTY

SECTION 3.1 Property Ownership. Redeveloper is the fee title owner of the Property.

ARTICLE IV
PROJECT APPROVALS

SECTION 4.1 Governmental Approvals and Third Party Approvals. (a) Redeveloper shall use all diligent effort to secure, or cause to be secured, any and all Governmental Approvals and Third Party Approvals for the Project in order to cause the Commencement and Completion of the Project and Property in accordance with the Project Schedule and the provisions of Section 2.3. Any conditions of Site Plan Approval set forth on the Planning Board Resolution approving the Site Plan for the Project shall be adopted and incorporated herein and Redeveloper's obligation to comply with such conditions shall be deemed a requirement under this Agreement.

(b) The Borough agrees to reasonably cooperate with Redeveloper and to support any application for and to obtain any Governmental Approvals and Third Party Approvals that are consistent with the terms of this Agreement, the Redevelopment Plan and Applicable Laws and the approved site plan, and at the request of Redeveloper to execute any documents required to obtain such approvals that the Borough deems reasonable, provided that, nothing in this Section shall be deemed: (i) to constitute an approval of all or any portion of the Project for which Governmental Applications have been submitted or are required; or (ii) a waiver of the ability of the Planning Board or any other Governmental Body having jurisdiction thereof from exercising its statutorily authorized responsibilities with respect to the Governmental Applications or Governmental Approvals required by Applicable Law. Redeveloper shall update the list of all Governmental Approvals as part of the Progress Reports, if and as appropriate during the Project and provide copies to the Borough.

(c) No Governmental Approval shall be deemed "final" until (i) the time for all appeals has run without the filing of an appeal or (ii) in the event an appeal is filed, all such appeal(s) have been resolved fully in favor of the Project and/or Redeveloper and the time for filing any further appeal has expired without the filing of any such appeals.

(d) Redeveloper shall have the right to contest any unsatisfactory requirement or condition with respect to the Project imposed on Redeveloper as a condition to a Governmental Approval including, without limitation, the imposition of any off-site improvements; provided that Redeveloper shall have no obligation to comply with any such requirement or condition if Redeveloper is unsuccessful in contesting same and such requirement is not commercially reasonable as reasonably determined by Redeveloper or is materially inconsistent with Redeveloper's building and site plans, in which event, Redeveloper may terminate this Agreement pursuant to Section 13.2(c) herein (including compliance with the notice requirements set forth in that Section after a final, adverse nonappealable decision), as

Redeveloper's sole remedy. In such instance, the parties may agree to consider a modification of this Agreement in a manner similar to that provided for in Section (e) below, but the Borough shall not be obligated to do so.

(e) In the event that Redeveloper's application for any Governmental Approval is denied or any Person brings an action that contests or challenges the grant of any Governmental Approval, then Redeveloper shall have the right in its discretion to (i) modify and resubmit such application, if applicable, in order to secure such Governmental Approval; provided that such modification does not have a material adverse impact on (1) the financial condition of the Project (2) the Project, or its intended uses or (3) either Party, and/or (ii) appeal or defend against such action. In the event of a final, adverse, nonappealable decision, the Parties shall during the sixty (60) day period immediately following receipt by both Parties of such decision, use diligent, reasonable efforts and good faith negotiations to modify the Project and amend this Agreement (and any Governmental Approval, including the Redevelopment Plan) in order to assist Redeveloper in obtaining the required Governmental Approvals. If, at the end of such sixty (60) day period, subject to mutual agreement of the Parties to extend such time period, there is no agreement between the Parties as to how to modify the Project and amend this Agreement (and any Governmental Approval, including the Redevelopment Plan), either Party may terminate this Agreement by providing written notice to the other Party in accordance with the provisions of Section 13.2(c) of this Agreement.

ARTICLE V

FINANCING OF THE PROJECT

SECTION 5.1 Redeveloper Financial Commitment. Redeveloper represents that it will use good faith efforts to obtain the requisite equity and debt financing in an amount necessary to Complete the Project.

(a) **Project Costs.** All costs of implementing and Completing the Project, including but not limited to the cost of obtaining all Governmental Approvals, the cost of the acquisition of the Property, the cost of designing and constructing all Project Improvements, all financing costs, all marketing and leasing costs for the Project Improvements, and the Borough Costs (collectively, the "**Project Costs**") shall be borne by Redeveloper. Unless otherwise specifically set forth herein, the Borough shall not be responsible for any costs associated with the Project.

(b) **Payment of Borough Costs.** Redeveloper has previously posted an escrow to provide funding to the Borough for all out of pocket costs incurred by the Borough in connection with Redeveloper's undertakings with respect to the Project. Such costs include, but are not limited to, any reasonable fees and costs of any outside professional consultant or vendor retained by the Borough including outside attorneys, technical consultants, planners, financial consultants and appraisers, among others (the "**Borough Costs**"). Redeveloper established an escrow account in the amount of Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars to pay for the Borough Costs (the "**Escrow Account**"). Redeveloper and the Borough hereby agree that Redeveloper is to continue to fund the Borough Costs through the Escrow Account which shall be administered by the terms of this Agreement in place of any prior agreements. The Borough agrees to make reasonable efforts to indicate the categories into which such Borough Costs can be attributed.

Redeveloper represents that it will make timely payment or reimbursement to the Borough of the Borough Costs. If, when and as often as may occur that the Escrow Account is drawn down to Five Thousand Dollars (\$5,000), then Redeveloper, upon the Borough's written request, shall within ten (10) business days thereafter, provide to the Borough for deposit funds sufficient to replenish the Escrow Account to the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for use in accordance with these terms, unless such time period shall be extended for good reason by the Borough in its sole discretion. Funds in the Escrow Account will be applied to the payment or reimbursement of the Borough Costs as provided in this Agreement. The Borough shall provide Redeveloper with invoices setting forth the costs incurred by the Borough which will be drawn down against the Escrow Account. Upon the issuance of the Certificate of Completion, or upon termination of this Agreement, except in the event of a termination caused by a default of Redeveloper, any money remaining in the Escrow Account shall be disbursed to Redeveloper, except that the Borough may retain for not more than sixty (60) days after the issuance of the Certificate of Completion or the termination date, an amount sufficient to cover unpaid expenses.

SECTION 5.2 Governmental Approval Fees. Redeveloper shall pay all fees for permits required by the Borough (in accordance with standard fees provided in the Borough Code) and any other Governmental Body for the construction and development of the Project.

SECTION 5.3 Mortgage Financing; Notice Of Default To Mortgagee; Right To Cure. (a) **Mortgage Financing.** (i) Neither Redeveloper nor any successor in interest to Redeveloper or the Property, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, 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 the Property, except as may be required for the purpose of obtaining funds in connection with the development and construction of the Project, as authorized under Section 12.2(a) herein; provided, however, that upon the issuance of a Certificate of Completion for the Project, such prohibition shall no longer apply with respect to the Project Improvements. Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any part thereof (the mortgagee thereunder or its affiliate, a "**Holder**"), except for a Permitted Transfer pursuant to Section 12.2 herein, and, in any event, Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Property, whether by voluntary act of Redeveloper or otherwise, upon obtaining actual knowledge or notice of same.

(ii) To the extent reasonably requested by Redeveloper, the Borough shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Borough) as may be requested or required by any Holder; provided, however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Redeveloper or the Borough under this Agreement.

(b) **Notice of Default to Holder and Right to Cure.** (i) Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or default by

Redeveloper under this Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand, provided that Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds.

(ii) To the extent that any Holder is required to foreclose against any lien it has with respect to the Project (as a result of a Redeveloper Event of Default or a default by Redeveloper under any agreements executed by Redeveloper and its Project lenders), the Borough agrees to forbear from the enforcement of any remedies provided under this Agreement that it may have against Redeveloper in order to permit such Holder to foreclose and assume or cause a third party to assume the obligations of Redeveloper under this Agreement; provided, however, that the Borough shall not be obligated to forbear from the exercise of any remedies available to it hereunder if such forbearance will result (or may result, in the reasonable judgment of the Borough) in a waiver of the Borough's rights under this Agreement or a material and adverse effect on the Borough's rights or performance obligations hereunder or any material increase in the Borough's financial obligations hereunder.

(c) **No Guarantee of Development, Construction or Completion of the Project by Holder.** Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the Holder of any mortgage (including any such Holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or transfer in lieu thereof) may acquire title as a result of foreclosure proceedings or transfer in lieu thereof, and such transfer of title shall not be deemed a transfer in violation of Article XII, and the Borough hereby consents thereto. The Holder shall in no manner be obligated by the provisions of this Agreement to develop, construct or Complete the Project (or portion to which its mortgage relates), or to guarantee such development, construction or Completion; nor shall any covenant or any other provisions be construed to so obligate a Holder and the Holder shall have those rights described in this Article V to cure any Event of Default and complete the Project. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or Completion of the Project, or portion to which its mortgage relates (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 the Borough going forward from and after the date of such assumption with respect to the Project (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the Borough and the Holder. Likewise, any third-party purchaser other than the Holder who obtains title to the Property or any part thereof upon a foreclosure proceeding may acquire title upon such foreclosure proceeding, and such transfer of title shall not be deemed a transfer in violation of Article XII, and the Borough hereby consents thereto; but such purchaser shall be subject to the provisions in (d) below.

(d) **Foreclosure.** If a Holder forecloses its mortgage secured by the Property (or portion to which its mortgage relates), or takes title to the Property (or portion to which its mortgage relates) by deed-in-lieu of foreclosure or similar transaction or if a third party purchaser acquires the Property at the foreclosure sale, (collectively a "**Foreclosure**"), the

Holder or such third party purchaser shall have the option to either (i) sell the Property or the Project to a Person that has the qualification and financial responsibility necessary to perform the obligations of Redeveloper reasonably determined by the Borough, which shall assume the obligations of Redeveloper under this Agreement in accordance with Applicable Law, (ii) assume the obligations of Redeveloper under this Agreement in accordance with Applicable Law, or (iii) terminate this Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or the third-party purchaser referenced above assuming the obligations of Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Project in the manner provided in this Agreement, but subject to reasonable extensions of the scheduled Completion Date. Any such Holder or Person assuming such obligations of Redeveloper, properly Completing Project Improvements shall be entitled to Certificates 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 Property, 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 Plan.

Section 5.4 PILOT Agreement. Redeveloper intends to make application for a tax exemption on the Project Improvements pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1, et seq.* (the “**LTTE Law**”), for a payment in lieu of taxes (PILOT) in an amount based upon a percentage of annual gross revenue of the Project for a term of thirty (30) years. The Parties agree that the approval of a tax exemption and the execution of a financial agreement (the “**Financial Agreement**”) pursuant to the LTTE Law is a material term of this Agreement and the failure of the Parties to execute a Financial Agreement within nine (9) months of the Effective Date shall permit Redeveloper to terminate this Agreement upon written notice to the Borough.

ARTICLE VI

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 6.1 Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties as of the Effective Date, understanding that the Borough has relied thereon as a material element in entering into this Agreement:

(a) Redeveloper is a limited liability company, duly organized and validly existing in good standing and is authorized to do business in the State of New Jersey.

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

(c) All necessary consents have been duly adopted to authorize the execution and

delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf, and this Agreement constitutes a valid and legally binding obligation of Redeveloper, enforceable in accordance with its terms.

(d) 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.

(e) 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 statute that is applicable to Redeveloper shall have been filed.

(f) Redeveloper has received no actual written notice asserting any noncompliance in any material respect by Redeveloper with applicable statutes, rules and regulations of the United States, the State or of any Borough 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 Borough, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

(g) To the best of Redeveloper's actual knowledge, there is no action, proceeding or investigation now pending or threatened, nor has Redeveloper received written notice of any such action, proceeding or investigation, which (i) 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 (ii) 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.

(h) To the best of Redeveloper's actual knowledge, Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of or conflict with any of Redeveloper's organizational documents.

(i) To Redeveloper's actual knowledge, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project, in conformance with the requirements of this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

(j) The ownership of each member of Redeveloper owning ten percent (10%) or more of the ownership interest in Redeveloper is set forth on **Exhibit E**. Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by a managing member of Redeveloper, setting forth all of the ownership interests of Redeveloper owning ten percent (10%) or more of the ownership interest in Redeveloper.

(k) To Redeveloper's actual knowledge, neither Redeveloper nor its members have 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 and members of Redeveloper, is not a target of a criminal investigation.

(l) To the best of Redeveloper's actual knowledge, neither Redeveloper nor its members directly or beneficially, is a party to or beneficiary of any contract or agreement with the Borough which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Borough alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Borough.

(m) To the best of Redeveloper's actual knowledge, neither Redeveloper nor its members has been found in any civil or criminal action or by a court or Borough 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.

(n) To the best of Redeveloper's actual knowledge, neither Redeveloper nor its members has violated any Borough, State or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest.

SECTION 6.2 Representations and Warranties by the Borough. The Borough hereby makes the following representations and warranties, understanding that Redeveloper has relied thereon as a material element in entering into this Agreement:

(a) The Borough has the legal power, right, authority and means to enter into this Agreement and the instruments and documents referenced herein to which the Borough is or may be a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(b) Upon the approval of this Agreement by the Borough, all requisite action will have been taken by the Borough, and after all due and diligent investigation by the Borough, the Borough represents that (i) all requisite consents have been obtained in connection with the entering into this Agreement and the instruments and documents referenced herein to which the Borough is party, (ii) the consummation of the transaction contemplated hereby, and to the best of the Borough's knowledge and belief are permitted and/or authorized by all Applicable Laws, and (iii) after all due and diligent investigation and to the best knowledge of the Borough, there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the Borough entering into or performing its obligations under this Agreement.

(c) This Agreement is duly executed by the Borough, and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws 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 Borough is a party.

(d) The Borough represents that to the best of its knowledge there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Borough pursuant to this Agreement.

SECTION 6.3 Mutual Representations. In the event that any contractual provisions that are required by Applicable Law have been omitted, then the Borough 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 Borough and Redeveloper agree to act in good faith to mitigate such changes in position. In the event despite the efforts of the Parties to mitigate, such change results in a material adverse financial impact on either Party, either Party may terminate this Agreement by providing written notice to the other Party within thirty (30) days of the discovery of the deemed incorporation of any such clause.

ARTICLE VII

COVENANTS AND RESTRICTIONS

SECTION 7.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

(a) Redeveloper shall design, construct, and operate the Project in compliance with the Redevelopment Plan, Governmental Approvals, Applicable Laws and this Agreement in all material respects.

(b) Redeveloper shall not use the Property, Project Improvements, or any part thereof in a manner that is inconsistent with the Redevelopment Plan.

(c) Redeveloper shall not discriminate against any person, or group of persons, on the basis of age, race, color, religion, creed, national origin, ancestry, physical handicap, familial status, sex, or sexual orientation in the sale, lease, sublease, rental, transfer, use, or occupancy of any Property in the Redevelopment Area, or any part thereof.

(d) Redeveloper shall not employ, hire or otherwise involve in the Project any Person that Redeveloper knows has previously been disbarred, suspended or otherwise ruled unable to participate in the process of bidding for and being awarded public contracts; the Borough agrees to supply a list of any such persons of which it has knowledge.

SECTION 7.2 Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough shall fully cooperate with Redeveloper to obtain Governmental Approvals for the Project.

(b) The Borough shall undertake and complete, with due diligence, all of its obligations under this Agreement.

SECTION 7.3 Declaration of Covenants and Restrictions. Redeveloper shall execute and record a Declaration of Covenants and Restrictions in the form attached hereto as *Exhibit F* (the “**Declaration**”).

SECTION 7.4 Effect and Duration of Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the covenants and restrictions contained in the Declaration shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, against Redeveloper, its successors and assigns and every successor in interest therein to the Property. However, such agreements and covenants shall be binding on Redeveloper itself, each successor in interest to Redeveloper, respectively, only for such period as Redeveloper or such successor or party shall own or lease the Property, the buildings and structures thereon or any part thereof.

SECTION 7.5 Enforcement by the Borough. (a) In amplification, and not in restriction, of the provisions of this Article VII, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the terms and covenants set forth in this Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the Declaration shall so state) run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. The Borough shall have the right, in the event of any material breach of any such agreement or covenant beyond any applicable notice and cure period, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other lawful proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

(b) The covenants and restrictions contained in this Article VII shall run with the land and be referenced in any deeds, leases, or other documents of conveyance for the Property, but shall cease and terminate upon issuance of a Certificate of Completion for the Project.

(c) Upon redevelopment of the Property and Completion of the Project, the conditions that were found and determined to exist at the time the Property was determined to be in need of rehabilitation shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Project.

ARTICLE VIII

COLLATERAL DOCUMENTS

SECTION 8.1 Delivery of Collateral Documents. Redeveloper and the Borough agree that the rights, obligations and liabilities of the Parties under this Agreement are conditioned upon the delivery of the fully executed collateral documents referred to in this Article VIII and hereby acknowledge the receipt of such documents, simultaneously with the execution of this Agreement.

SECTION 8.2 Documents Delivered by Redeveloper. Redeveloper agrees to deliver the following fully executed collateral documents on the Effective Date: Certified copies of Redeveloper's (i) Certificate of Formation, (ii) Certificate of Good Standing and (iii) Business Registration Certificate in accordance with *N.J.S.A. 52:32-44* and *N.J.S.A. 40A:11-2*.

ARTICLE IX

REQUIRED UNDERTAKINGS

SECTION 9.1 Supervision. To the extent required by Applicable Law, Redeveloper shall use commercially reasonable efforts to cause the contractors and subcontractors to (a) confine operations in the Property, or areas appurtenant thereto, to areas permitted by the Governmental Approvals and Applicable Laws, and (b) not unreasonably encumber the Property, or areas appurtenant thereto, with materials or equipment.

SECTION 9.2 Neighborhood Impacts. Redeveloper acknowledges that the construction of the Project will have certain impacts on the neighborhoods in the vicinity of the Project. Although it is anticipated that the 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 such steps as are commercially reasonable, as determined by the Planning Board as a condition of site plan approval, in order to minimize any potential negative effects that the construction of the Project may produce. As a result, the Borough and Redeveloper agree herein to use reasonable good faith efforts to address the concerns of the surrounding neighborhoods in order to assure the citizens of the Borough that reside in those neighborhoods that the Project will be completed with a minimum inconvenience and result in a maximum benefit, to the extent practical. Accordingly, the Parties agree to the provisions set forth below in this Article IX.

SECTION 9.3 Traffic. To the extent required by Applicable Law, in coordination with the appropriate department within the Borough that is responsible for traffic related issues, Redeveloper will use commercially reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods. Redeveloper shall be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to traffic issues related to the Project and will address the issue in the context of review of site plan applications.

SECTION 9.4 Rodent, Insect and Animal Control. To the extent required by Applicable Law, in coordination with the Department of Health, Redeveloper will take commercially reasonable efforts to minimize and control the migration of rodents, insects, or other animals from the Property during the construction of the Project.

SECTION 9.5 Illumination, Noise, Dust Pollution or Damage. To the extent required by Applicable Law, in coordination with the Department of Health, Redeveloper agrees that it will use commercially reasonable efforts to minimize the passage of excessive or unwarranted illumination, noise or dust pollution into the surrounding community during construction. Redeveloper shall be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to illumination issues related to the Project and will address the issue in the context of review of site plan applications.

SECTION 9.6 Maintenance and Landscaping. Following completion of construction, Redeveloper will be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to maintenance and landscaping issues related to the Project and will address the issue in the context of review of site plan applications.

ARTICLE X
INSURANCE

SECTION 10.1 General Requirements. From and after the date of execution of this Agreement, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Property in the Redevelopment Area as provided below until a Certificate of Completion has been issued with regard to the Project.

Redeveloper shall furnish the Borough with satisfactory proof that it has obtained the insurance described below from insurance companies or underwriters reasonably satisfactory to the Borough. The Borough shall be named as an additional insured party under all such insurance policies, except the insurance for workers compensation. Redeveloper shall furnish to the Borough certificates for the following types of insurance showing the type, amount, and class of operations insured, and the effective and expiration dates of the policies. The certificates shall be submitted promptly upon execution of this Agreement and Redeveloper shall not be entitled to exercise any rights hereunder until the certificate has been received. Specific reference to this Agreement shall be made in all policies.

SECTION 10.2 Insurance Required. (a) (i) All insurance policies required by this Article XI shall be obtained from insurance companies licensed to conduct business in the State and rated at least A- in Best's Insurance Guide.

(ii) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (1) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (2) to the extent available, that the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Borough, and (3) the Borough shall not be liable for any premiums or assessments. All such insurance shall have commercially reasonable deductibility limits. Redeveloper shall be responsible for paying any deductible amount under all insurance policies.

(b) Redeveloper shall furnish or cause to be furnished to the Borough evidence satisfactory to the Borough of Commercial General Liability Insurance, and Umbrella Excess Liability Coverage, insuring Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on the Property in the Redevelopment Area, or related to the construction thereon, including claims made by subcontractor personnel, in an amount consistent with the size of the Project. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other customary covered losses, however occasioned, occurring during the policy term, and shall be endorsed to add the Borough as an additional insured and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough.

(c) Redeveloper shall furnish or cause to be furnished to the Borough evidence satisfactory to the Borough of Builder's Risk Insurance for the benefit of Redeveloper (subject to the interests of any lender or Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief.

(d) Redeveloper shall furnish or cause to be furnished to the Borough evidence satisfactory to the Borough that any contractor with whom it has contracted for the construction of the Project carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, which shall be endorsed with a waiver of subrogation clause for the Borough.

(e) Redeveloper shall furnish or cause to be furnished to the Borough evidence reasonably satisfactory to the Borough that any consultant with whom it has contracted for the design of the Project carries errors and omissions insurance, naming the Borough as an additional insured, with limits reasonably acceptable to the Borough.

SECTION 10.3 Other Insurance. To the extent required by any Project tenant, or that Redeveloper obtains financing for the Project and such lender or Holder requires that Redeveloper obtain insurance for the Project, such insurance obtained by Redeveloper as a condition of the financing shall be deemed to satisfy the above requirements of this Article X so long as the Borough is named as additional insured as its interests appear under such policies, with limits reasonably acceptable to the Borough.

ARTICLE XI

INDEMNIFICATION

SECTION 11.1 Redeveloper's Indemnity. (a) Redeveloper covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all Claims resulting from or in any way connected with the acquisition, condition, use, possession, conduct, management, planning, design, construction, installation, or other cause of action arising from the nexus of the Borough to Redeveloper as a result of this Agreement, including but not limited to, the death of any person or any accident, injury, loss, and damage whatsoever caused to any person or to the property of any person that shall occur on the Property and that, with respect to any of the foregoing, are directly related to or resulting from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors but not to the extent resulting from the negligence of the Borough.

(b) In any situation in which the Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, the Borough Indemnified Parties shall give prompt notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify the Borough Indemnified Parties, unless such failure to give prompt notice materially impairs Redeveloper's ability to defend. Upon receipt of such notice, Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Parties, including the employment of counsel reasonably acceptable to the Borough Indemnified Parties, the payment of all expenses and the

right to negotiate and consent to settlement. All of the Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized in advance by Redeveloper, provided, however, that if the defense of such action is assumed by Redeveloper's insurance carrier, employment of such separate counsel by the Borough Indemnified Parties shall be at the sole discretion of such carrier, as provided in its endorsement of insurance. Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Redeveloper or if there is a final judgment against Redeveloper in any such action, Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Parties are entitled to indemnification hereunder.

(c) Notwithstanding anything to the contrary in this Article XI, Redeveloper's indemnity shall not extend to any claims if caused by or as a result of the negligence or willful misconduct of the Borough or any Borough Indemnified Parties.

SECTION 11.2 Survival of Indemnity. The provisions of this Article XI shall survive the termination of this Agreement due to an Event of Default by the indemnifying Party and shall exist until such time as Redeveloper's covenants under the Declaration are discharged as a result of the recording of a Certificate of Completion, as applicable, provided, however, that such indemnity shall be binding on Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, respectively, only for such period as Redeveloper or such successor or party shall have title to the Property, the Project Improvements or any part thereof.

ARTICLE XII

RESTRICTIONS ON TRANSFER

SECTION 12.1 Prohibition Against Transfers. Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of Redeveloper and its qualifications are critical to the Borough in entering into this Agreement, particularly in view of the public aids that have been or will be made available for the purpose of making such redevelopment possible. The Parties acknowledge and agree that a change in ownership of Redeveloper from that which is noted in *Exhibit E* attached hereto, or any other act or transaction involving or resulting in a significant change with respect to the identity of the parties in control of Redeveloper is, for practical purposes, a transfer or disposition of the Project then owned by Redeveloper.

Except for Permitted Transfers, prior to the issuance of a Certificate of Completion, Redeveloper shall not, without the prior written consent of the Borough, which consent shall not be unreasonably withheld: (a) effect or permit any change, directly or indirectly, in the majority ownership or control of Redeveloper (except in the case of death of an individual(s) having or affecting such ownership or control), (b) assign or attempt to assign this Agreement or any rights herein or in the Property, or (c) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Property or the Project Improvements (collectively a "Transfer").

SECTION 12.2 Permitted Transfers. The following Transfers are exceptions to the prohibitions of this Article XII and the Borough's consent is deemed given hereby (the "Permitted Transfers"), provided that, to the extent practical, notice of same is given to the Borough as required in Section 12.3 below: (a) a mortgage or related security (including conditional assignments to mortgagees or Holders required as a condition to the closing of the financing so secured) granted by Redeveloper to a Holder or of a Project tenant to a leasehold mortgagee, provided further that the occurrence of an Event of Default as to Redeveloper hereunder constitutes an event of default under the loan documentation for such financing; (b) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development and construction of the Project; (c) the Declaration, provided that such Declaration shall otherwise be in compliance and consistent with the Redevelopment Plan and this Agreement; (d) utility and other development easements; (e) a residential lease to a tenant occupying the premises in the Project as a part of the intended use of the Project; (f) transfer to an Affiliate of Redeveloper; (g) transfers of the direct or indirect ownership or control of Redeveloper among the existing owners, family members of the owners, and/or trusts established for estate planning purposes; (h) transfers of any direct or indirect interest in Redeveloper to an entity owned or controlled by the existing owners or family members; (i) transfer of less than a direct or indirect controlling interest in Redeveloper; (j) environmental covenants and restrictions imposed by a regulatory agency; and (k) any contract or agreement with respect to any of the foregoing exceptions.

For the avoidance of doubt, the Borough consents to the transfer to a Holder upon a foreclosure or deed in lieu as provided in Article V.

SECTION 12.3 Notice of Permitted Transfers. With respect to any Permitted Transfer under Section 12.2(f), Redeveloper shall, to the extent practical, provide to the Borough written notice at least fifteen (15) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the parties and any parties, individuals and/or entities comprising such parties.

SECTION 12.4 Transfers Void. Any transfer of Redeveloper's interest in violation of this Article XII shall be an Event of Default of Redeveloper and shall be null and void *ab initio*. Such Event of Default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Agreement. In the absence of Permitted Transfer or specific written consent by the Borough, no such sale, transfer, conveyance or assignment of the Property or Project Improvements, shall be deemed to relieve Redeveloper from any obligations under this Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article XII. In the event of any attempted transfer in violation of the restrictions in this Article XII the Borough shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Monmouth County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens. Upon recording of the Final Certificate Completion, the provisions of the Declaration set forth in this Article XII shall be deemed terminated.

SECTION 12.5 Speculative Development. Redeveloper represents its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Property and not for speculation in land holding. Redeveloper shall not use the Property, or any part thereof, as collateral for an unrelated transaction.

ARTICLE XIII
EVENT OF DEFAULT, REMEDIES

SECTION 13.1 Events of Default. Either of the Parties shall have the right to declare the other Party in default of this Agreement if any of the following events (each an “**Event of Default**”) occur:

(a) Subject to Section 2.5, material failure of either Party to substantially observe and perform any covenant, condition, or agreement hereunder, or a material breach of a representation or warranty set forth in Article VI, and continuance of such failure or breach for thirty (30) days after receipt by the defaulting party of a notice of default (the “**Default Notice**”) from the non-defaulting party specifying in sufficient detail, accompanied by any relevant documentation therefore, of (i) the nature and extent of such failure or breach, (ii) what action is required to remedy such default and (iii) requesting that such failure or breach be remedied; provided, however, if the breach of any such covenant, condition, representation, warranty or agreement is one which cannot be completely remedied within thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party has commenced the cure within the thirty (30) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties to reach compliance; or

(b) Redeveloper materially defaults in or materially violates obligations with respect to design, development and construction of the Project in accordance with this Agreement, the Redevelopment Plan, Governmental Approvals or Applicable Law, and any such default, or violation shall not be cured, ended or remedied within sixty (60) days after written demand by the Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within sixty (60) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(c) Redeveloper fails to substantially comply with the Project Schedule, as the same may be modified or extended from time to time in accordance with this Agreement, or shall abandon or substantially suspend construction work for a period of ninety (90) consecutive days (subject to the provisions of Section 2.5) and any such default, or violation shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after such written notice has been given, it shall not be an Event of Default as

long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(d) Redeveloper causes a Transfer or assignment prohibited under this Agreement and any such default, or violation shall not be cured, ended, or remedied within forty-five (45) days after written demand by the Borough to do so; or

(e) Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed in the ordinary course of business) fails to pay any real estate taxes, assessments, payments in lieu of taxes on the Property or any part thereof prior to the imposition of any penalty therefore, or shall place on the Property any encumbrance or lien unauthorized by this Agreement and such real estate taxes payments in lieu of taxes, encumbrance or lien have not been paid, removed or discharged or provision satisfactory to the Borough made for such payment, removal or discharge within sixty (60) days after written demand by the Borough to do so; or

(f) (i) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; (iii) Redeveloper (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against Redeveloper and shall not have been dismissed or stayed for a period of one hundred twenty (120) consecutive days from the date of filing; (vii) an order for relief materially affecting the rights of the Borough under this Agreement shall have been entered with respect to or for the benefit of Redeveloper, under the United States Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (ix) Redeveloper shall have suspended the transaction of its ordinary business activities for more than ninety (90) consecutive days.

SECTION 13.2 Remedies Upon Default; Termination. (a) Upon an Event of Default by the Borough which is continuing and remains uncured beyond any applicable notice and cure dates, Redeveloper may terminate this Agreement or demand that the Borough participate in binding arbitration, pursuant to Section 13.2(d) below. No claim for damages may be brought against the Borough.

(b) Upon an Event of Default by Redeveloper which is continuing and remains uncured beyond applicable notice and cure dates, the Borough may terminate this Agreement or demand that Redeveloper participate in binding arbitration, pursuant to Section 13.2(d) below. No claim for damages may be brought against Redeveloper.

(c) In the event that either Party exercises its right to termination pursuant to Section 4.1(d) and (e) and/or Section 6.3, the terminating Party shall provide the other Party with written notice of such election not less than thirty (30) days prior to exercise. Within thirty (30) days of such termination: (i) Redeveloper shall pay to the Borough all outstanding Borough Costs; and (ii) upon full payment of all Borough Costs, the Borough shall return the balance of the amounts, if any, in the Escrow Account. In such case neither Party shall have any further rights, claims or obligations against the other Party arising out of this Agreement.

(d) **Arbitration**. A Party who has received a notice of default, after making a good-faith effort to cure the alleged default or to resolve any dispute concerning the alleged default, may submit its dispute to binding arbitration. In the Event that a non-defaulting Party does not exercise the option to terminate this Agreement based upon an Event of Default that has not been cured, pursuant to this Section 13.2, the non-defaulting Party may submit its dispute to binding arbitration, in which the defaulting Party shall be obligated to participate. The dispute shall be submitted to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations and the determination of the arbitrator shall be binding. Costs for said arbitration shall be borne equally by the Parties.

SECTION 13.3 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 any act, event or condition or any combination thereof 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, and shall prevent the party relying thereon from compliance with a relevant condition of the Redevelopment Agreement (“**Force Majeure**”) including, without limitation, the following:

(a) Lightning, blizzards, hurricane, tornado, earthquake, or other similar natural occurrences, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence (but not including reasonably anticipated weather conditions for the geographic area of the Project), to the extent that such events physically affect a Party’s ability to fulfill its obligations hereunder.

(b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either Party.

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than the Borough when acting in conformance with this Agreement) with jurisdiction over the Project and/or within the Borough, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, such order, judgment, action and/or determination 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 order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party.

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be an event of Force Majeure.

(e) Strikes, lockouts, slowdowns or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same beyond the control of Redeveloper or any of its members.

(f) Remediation related interruption, failure, or delay encountered due to unforeseen conditions or unanticipated results of actions taken in the course of dealing with contamination.

(g) Demolition related interruption, failure, or delay encountered during the course of removal of existing buildings or improvements.

Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure that affects part of the Project, Redeveloper shall continue to perform its obligations for the rest of the Project. The existence of an act 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. Except for acts of Force Majeure resulting from acts or omissions of the Borough, all acts of Force Majeure will be deemed to have ceased to exist as of a date eighteen (18) months from its initial occurrence.

SECTION 13.4 Default Notice to Holders. Upon the occurrence of an Event of Default by Redeveloper, the Borough shall afford to any Holder all notices and rights in accordance with the terms of Section 5.4 of this Agreement.

SECTION 13.5 Remedies Cumulative. 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. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

SECTION 13.6 Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

SECTION 13.7 Survival of Termination. The provisions of this Article XIII shall survive the termination of this Agreement as a result of an Event of Default by Redeveloper.

ARTICLE XV
MISCELLANEOUS

SECTION 14.1 Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and shall be hand delivered by messenger (with receipt acknowledged in writing), delivered by overnight delivery service (guaranteeing overnight delivery, with receipt acknowledged in writing), delivered personally, or delivered by electronic transmittal or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number or electronic mail address) to the Parties at their respective addresses (or facsimile numbers, at the case may be) set forth herein, except that notice of (a) an Event of Default and (b) the institution of legal proceedings may not be delivered by facsimile:

BOROUGH:

Borough of Keyport
Municipal Building
70 West Front Street
Keyport, New Jersey 07735
Attn: Business Administrator

With copy to:

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

REDEVELOPER:

Clay Perlman
Mariner's Village at Keyport, LLC
2601 Biscayne Boulevard
Miami, Florida 33137

With copy to:

Robert Beckelman, Esq.
Greenbaum, Rowe, Smith & Davis LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, New Jersey 07095-0988
Fax No. 732-476-2449
Email: rgoldsmith@greenbaumlaw.com

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 thirty (30) days, unless the context dictates otherwise.

Either Party may, from time to time (upon not less than seven (7) days' prior written notice given to the other Party pursuant to the terms of this Article XIV) change the address to which notices shall be sent or designate one or more additional or substitute persons to whom notices are to be sent.

SECTION 14.2 Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in Redeveloper or this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law.

SECTION 14.3 No Improper Consideration For Redevelopment Agreement. Redeveloper warrants it has not paid or given, and will 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 and the Borough warrant that Redeveloper has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Agreement, nor has the Borough or any officer or official of the Borough received any such payment or accepted any such obligation.

SECTION 14.4 Non-Liability of Officials and Employees of the Borough. No member, official, or employee of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement, unless such member, official, or employee shall have willfully acted in bad faith or with gross negligence.

SECTION 14.5 Non-Liability of Officials, Members and Employees of Redeveloper. No member, officer, shareholders, director, partner, or employee of Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Agreement, unless such member, officer, shareholder, director, partner, or employee shall have willfully acted in bad faith or with gross negligence.

SECTION 14.6 Inspection of Books and Records. (a) The Borough shall have the right during normal business hours and subject to reasonable advance notice (but not less than fifteen (15) business days) to inspect at Redeveloper's place of business, the books and records of Redeveloper pertinent to the purposes of this Agreement, including but not limited to construction contracts, books and records, and insurance policies.

(b) Such inspections shall be performed at the offices of Redeveloper and at a time and in a manner as to not unreasonably interfere with the business operations of Redeveloper and be for a legitimate business purpose affecting the material interest of the Borough.

SECTION 14.7 Modification of Redevelopment Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and the Borough.

SECTION 14.8 Severability. To the extent that any article, section, subsection, clause, provision, or term of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of any such article, section, subsection, clause, provision, or term of this Agreement or the application of the 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, clause, provision, or term of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either of the Parties of the enjoyment of its substantial benefits under this Agreement.

SECTION 14.9 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

SECTION 14.10 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New Jersey.

SECTION 14.11 Borough Approvals. All approvals or disapprovals required by the Borough shall, unless otherwise stated herein, be valid if given in writing by the Borough's Business Administrator or the Business Administrator's authorized designee.

SECTION 14.12 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

SECTION 14.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter.

SECTION 14.14 Waiver. No waiver made by any Party with respect to any obligation of any other Party under this Agreement shall be considered a waiver of any other rights of the Party making the waiver beyond those expressly waived in writing and to the extent thereof.

SECTION 14.15 Counting of Days; Saturday, Sunday, or Holiday. The word "days" as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided herein 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. The term "Business Day" as used herein means any day other than a Saturday, Sunday, or a day on which banks and public offices are not open under the laws of the State.

SECTION 14.16 Review by Counsel. This Agreement shall be construed and enforced in accordance with the laws of the State without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and the Borough have combined in their review and approval of same.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

WITNESS:

**MARINER'S VILLAGE AT KEYPORT
URBAN RENEWAL, LLC**

By: _____

Name:

Title:

ATTEST:

Valerie T. Heilweil, RMC, CMR
Borough Clerk

THE BOROUGH OF KEYPORT

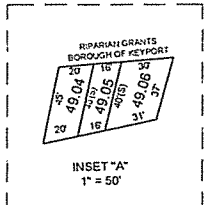
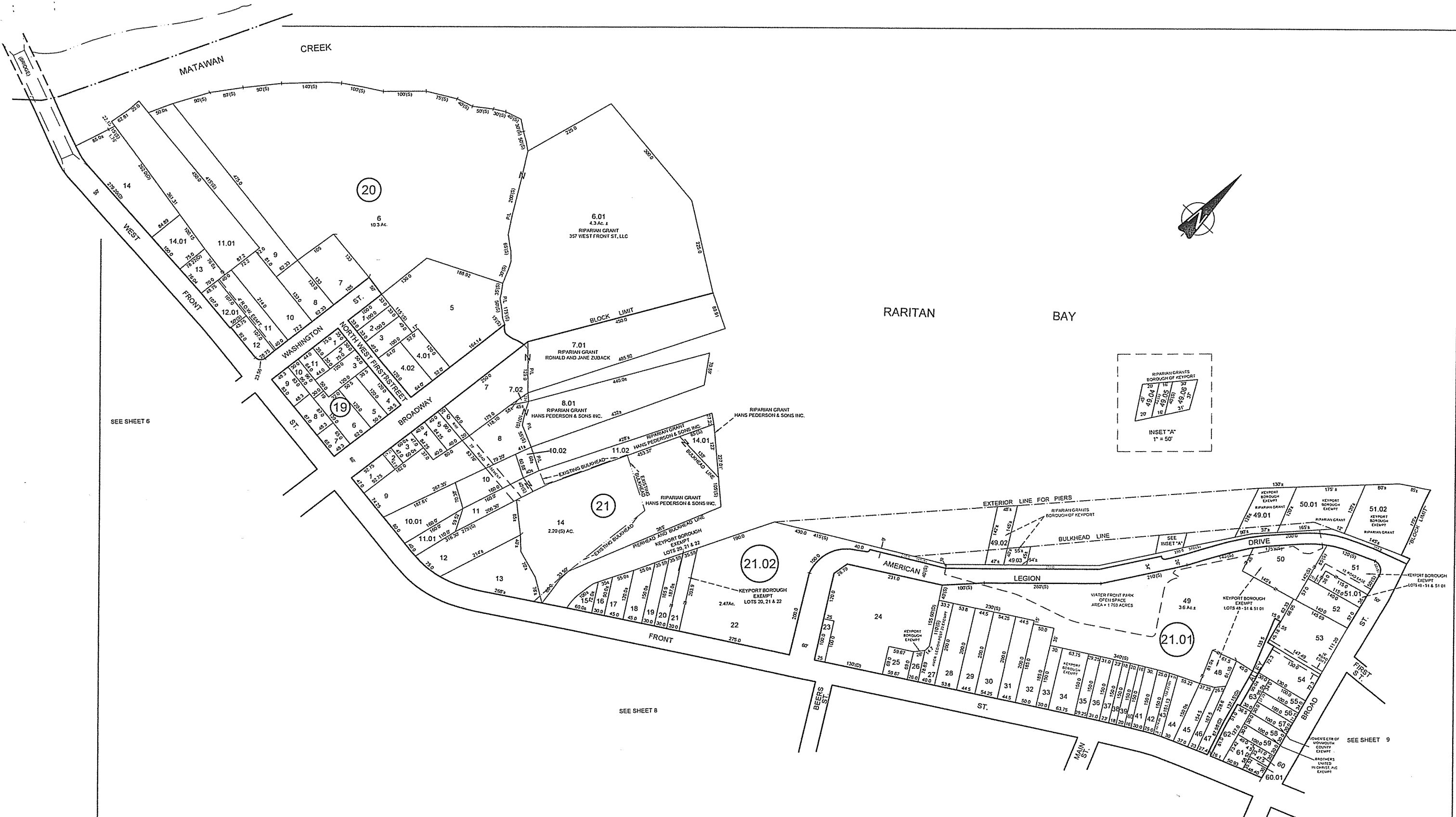
By: _____

Harry M. Aumack II
Mayor

LIST OF EXHIBITS

- A. Legal Description of the Property
- B. Form of Certificate of Completion
- C. Project Schedule
- D. Form of Progress Report
- E. Owners of More Than 10% of Redeveloper
- F. Form of Declaration of Covenants and Restrictions

EXHIBIT A
LEGAL DESCRIPTION



REVISIONS

DATE	NAME	LIC. No.
12/31/11	MICHAEL S. FINNEGAN, P.L.S.	6534851
12/31/13	MICHAEL S. FINNEGAN, P.L.S.	6534851

THIS SHEET HAS BEEN REDRAWN USING COMPUTER AIDED DRAFTING/DESIGN (CAD/D) BASED ON THE MAP PREPARED BY GEORGE W. EDWARDS, P.L.S. DATED AUGUST 1975.

THIS MAP REVISED AS NOTED
 ORIGINAL APPROVED AS A
 TAX MAP BY THE
 N.J. DIVISION OF TAXATION
 OCTOBER 10, 2007
 SERIAL NO. 918

TAX MAP
 BOROUGH OF KEYPORT
 MONMOUTH COUNTY, NEW JERSEY
 SCALE: 1" = 100' AUGUST 2007
JAMES K. WALZ
 PROFESSIONAL LAND SURVEYOR
 NEW JERSEY LICENSE NO. 24GS03402400
 833 ROUTE 9 NORTH, CAPE MAY COURT HOUSE, NJ 08210
 TO SHOW CONDITIONS AS OF DECEMBER 2013

EXHIBIT B
FORM CERTIFICATE OF COMPLETION

Record and Return to:

CERTIFICATE OF COMPLETION

Date: _____, 201_

Project: Construction of 120 residential rental units, an integrated parking facility, a kayak launch, a public bike share station and bike rack, a jitney bus service for residents, and infrastructure improvements required by the Keyport Unified Planning Board (the “Project”).

Location: Block 20, Lots 1, 2, 3, 5, 6, 6.01, 7 and 9 in the Borough of Keyport, Monmouth County, New Jersey as shown on the tax maps of the Borough (the “Property”)

Pursuant to Section 2.3(e) of the Redevelopment Agreement by and between the Borough of Keyport (the “Borough”) and Mariner’s Village at Keyport Urban Renewal LLC (the “Redeveloper”), dated as of _____, 2018, (the “Redevelopment Agreement”), the undersigned, an authorized representative of the Borough, certifies as of the date hereof that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

- (i) the Project in its entirety has been completed, acquired and/or installed as of [_____], in accordance with the Redevelopment Agreement, the Redevelopment Plan, and other Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;
- (ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;
- (iii) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; and
- (iv) a copy of the Certificate of Occupancy issued with respect to the **Project** is attached hereto as **Schedule A**.

This Certificate of Completion for the Project constitutes the Borough’s conclusive

determination that the Redeveloper has fully satisfied the agreements and covenants in the Redevelopment Agreement, which agreements and covenants are hereby terminated, and that the conditions determined to exist at the time the Property was determined to be an area in need of redevelopment are deemed to no longer exist with respect to the Property. The land and improvements constituting the Property are no longer subject to any covenant running with the land covered by this Certificate of Completion for the benefit of the Borough.

The recording of this Certificate of Completion shall terminate all covenants and restrictions set forth in a certain Declaration of Covenants and Restrictions, dated _____, 2018 and recorded on _____, 2018 in Book _____ Page _____ in the office of the Monmouth County Clerk.

Except as set forth in the Redevelopment Agreement, this certificate is given without prejudice to any rights of the Borough or the Redeveloper against third parties which exist on the date hereof or which may subsequently come into being.

Capitalized terms used in this Certificate of Completion shall have the same meaning ascribed to them in the Redevelopment Agreement.

ATTEST:

BOROUGH OF KEYPORT

Name:
Title:

By: _____
Name:
Title:

EXHIBIT C
PROJECT SCHEDULE

Site Plan Approval	September 30, 2018
Obtain all Other Governmental Approvals and Financing	September 30, 2019
Commence Construction	March 30, 2020
Complete Construction	March 30, 2023

EXHIBIT D
FORM OF PROGRESS REPORT

[*LETTERHEAD OF MARINER'S VILLAGE AT KEYPORT URBAN RENEWAL, LLC*]

_____, 201_

Borough of Keyport
70 West Front Street
Keyport, New Jersey 07735
Attn: _____, _____

**Re: Redevelopment Agreement dated _____, 2018 (“Agreement”),
 between the Borough of Keyport (“Borough”) and Mariner’s Village
 at Keyport Urban Renewal LLC (“Redeveloper”)**

Monthly Progress Report

Section 1 - Executive Summary Narrative

Section 2 - Budget & Cost Report

Section 3 - Schedule

Section 4 - Upcoming Approvals from Owner

Section 5 - Progress Photos

Sincerely,

Mariner’s Village at Keyport Urban Renewal LLC

By: _____

EXHIBIT E
OWNERS OF MORE THAN 10% OF REDEVELOPER

Ownership Percentages of Mariner's Village at Keyport Urban Renewal, LLC

<u>ENTITY/INDIVIDUAL</u>	<u>CURRENT OWNERSHIP %</u>
Roger Miller	100%

EXHIBIT F
FORM OF DECLARATION OF COVENANTS AND RESTRICTIONS

Record and Return to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

DECLARATION OF COVENANTS AND RESTRICTIONS

**Block 20, Lots 1, 2, 3, 5, 6, 6.01, 7 and 9 in the Borough of
Keyport, County of Monmouth (the “Property”)**

This Declaration of Covenants and Restrictions (“**Declaration**”) is made this ___ day of _____, 2018 by and between the **BOROUGH OF KEYPORT** (the “**Borough**”), a public body corporate and politic of the State of New Jersey having its offices at 70 West Front Street, Keyport, New Jersey 07735 in its capacity as redevelopment entity pursuant to *N.J.S.A. 40A:12A-4(c)*;

and

MARINER’S VILLAGE AT KEYPORT URBAN RENEWAL, LLC, an urban renewal entity qualified to do business in the State of New Jersey, having its principal place of business at 2601 Biscayne Boulevard, Miami, Florida 33137 (together with permitted successors or assigns as hereinafter provided, referred to as the “**Redeveloper**”);

W I T N E S S E T H :

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1, et seq.*, as amended and supplemented (the “**LRHL**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the Borough’s governing body (the “**Governing Body**”) duly adopted a resolution determining that a portion of the Borough, which includes the Property, was an “area in need of redevelopment” in accordance with the procedures and criteria in *N.J.S.A. 40A:12A-5* of the LRHL; and

WHEREAS, the Governing Body adopted by ordinance a redevelopment plan for the Property (the “**Redevelopment Plan**”) in accordance with *N.J.S.A. 40A:12A-7* of the LRHL; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the project to be constructed on the Property (the “**Project**”), the Governing Body duly adopted a resolution authorizing the execution of a redevelopment agreement with the

Redeveloper dated _____, 2018 (the “**Redevelopment Agreement**”) in accordance with *N.J.S.A. 40A:12A-8(f)* of the LRHL; and

WHEREAS, *N.J.S.A. 40A:12A-9(a)* of the LRHL requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that “the owner shall construct only the uses established in the current redevelopment plan”; and

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as perpetual covenants by the Redeveloper not to unlawfully discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Property or any building or structures erected thereon, to comply with Applicable Laws, Governmental Approvals, the Redevelopment Agreement and the Redevelopment Plan and to maintain in good condition any improvements made on the Property (as defined above) in accordance with the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement also provides that the Property, the Redevelopment Agreement, and the Redeveloper’s interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to the Borough for violations of the covenants and defaults under the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Covenants and Restrictions and that said Declaration be recorded in the Office of the Monmouth County Clerk.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that:

(A) The Redeveloper shall construct the Project on the Property in accordance with the Redevelopment Plan and the Redevelopment Agreement.

(B) Until a Certificate of Completion has been issued for the Project, or phase thereof, in accordance with the Redevelopment Agreement, the Redeveloper shall not sell, lease or otherwise transfer all or any portion of the Property for which a Certificate of Completion has not been issued without the written consent of the Borough, except as permitted under the Redevelopment Agreement; provided, however, that a Certificate of Occupancy shall constitute written approval for the lease of a residential unit for which such Certificate of Occupancy has been issued. If a Certificate of Completion is issued for a portion or phase of the Project, this Declaration shall be deemed released only as to such portion or phase without recording any separate release or amendment hereto.

(C) The Redeveloper shall, in connection with its use or occupancy of the Project, not

effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property, or any portion thereof, is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status. The Redeveloper shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(D) The Redeveloper shall, upon Completion of Construction, obtain all Governmental Approvals required authorizing the occupancy and uses of the Property for the purposes contemplated hereby.

(E) The Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense, except as may be otherwise set forth in the Redevelopment Agreement.

(F) The Redeveloper shall not encumber, hypothecate or otherwise use the Property, or any part thereof as collateral for any transaction unrelated to the Project.

(G) The Redeveloper shall promptly pay all outstanding Borough Costs, and any and all taxes, service charges or similar obligations when owed to the Borough in accordance with the Redevelopment Agreement.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run 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 the Redevelopment Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any person in possession or occupancy of the Property or any part thereof. The covenants and restrictions herein shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession, occupancy or control of the Property, the Project or any part thereof and only for the time established by the specific covenant or restriction. Despite any of the foregoing to the contrary, upon the issuance of the last certificate of completion for the Project, the covenants herein shall terminate and this Declaration shall be discharged of record and shall be deemed discharged pursuant to Section 2.3 of the Redevelopment Agreement (or any portion or phase of the Project for which a Certificate of Completion has been issued), provided however, that the covenants in Section 2(C) shall remain in effect without limitation as to time.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Redevelopment Agreement and this Declaration, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants and restrictions have been provided. Such covenants and restrictions shall run in favor the Borough for the entire period during which such covenants and restrictions

shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. During the period in which such covenants and restrictions shall be in force and effect, the Borough shall have the right, in the event of any material breach of any such covenant or restriction, 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 covenant or restrictions, to which it or any other beneficiaries of such agreement or covenant may be entitled.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Covenants and Restrictions to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

WITNESS:

BOROUGH OF KEYPORT

Borough Clerk

By: _____
_____, Mayor

WITNESS

**MARINER'S VILLAGE AT KEYPORT
URBAN RENEWAL, LLC**

By: _____
_____, Manager

