

RESOLUTION #__-20

**RESOLUTION OF THE BOROUGH OF KEYPORT, IN THE
COUNTY OF MONMOUTH, NEW JERSEY,
AUTHORIZING EXECUTION OF A REDEVELOPMENT
AGREEMENT BETWEEN THE BOROUGH OF KEYPORT
AND HUDSON POINTE AT KEYPORT, LLC WITH
RESPECT TO THE PROPERTY COMMONLY KNOWN AS
BLOCK 120, LOTS 8 AND 9, AND BLOCK 130, LOTS 42, 48,
49, 50, 51 AND 52 ON THE TAX MAP OF THE BOROUGH
OF KEYPORT**

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, such as the Borough of Keyport (the “**Borough**”), to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, on December 18, 2018, the Borough Council (the “**Council**”) of the Borough adopted a resolution designating certain properties within the Borough as a condemnation area in need of redevelopment (the “**Redevelopment Area**”) in accordance with the Redevelopment Law; and

WHEREAS, Hudson Pointe at Keyport, LLC (the “**Entity**”) is the contract purchaser of a portion of the Redevelopment Area identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough and commonly known as 75 Manchester Avenue, and Block 130, Lot 52, commonly known as 1 Maple Place (the “**Project Area**”); and

WHEREAS, by Resolution #118-20 adopted by the Borough Council on March 17, 2020, the Borough designated the Entity as “interim redeveloper” of the Project Area; and

WHEREAS, pursuant to *N.J.S.A. 40A:12A-7*, on September 15, 2020, the Borough Council adopted an ordinance approving and adopting a redevelopment plan for the Redevelopment Area (#9-20) (the “**Redevelopment Plan**”); and

WHEREAS, the proposed project to be undertaken by the Entity on the Project Area is the construction of: (i) a residential complex with forty-eight (48) units, which shall consist of no fewer than 4 one-bedroom and one-bathroom units, and no more than 44 two-bedroom and two-bathroom units; (ii) six (6) duplexes with each duplex containing two units with each unit having three bedrooms and 2.5 bathrooms; (iii) two (2) single family homes with 4 bedrooms and 2.5 bathrooms; (iv) one (1) two-family home; (v) a 3,500 square foot clubhouse; (vi) a 1,200 square foot recreational area with a gazebo; (vii) 124 on-site parking spaces; and (viii) 11 parking spaces located on Maple Place to replace the industrial building currently located at 75 Manchester Avenue and a two-family home at the terminus of Maple Place as required or permitted by the Redevelopment Plan (the “**Project**”); and

WHEREAS, the Borough desires to authorize the designation of the Entity as the Redeveloper for the Project Area and the execution of a redevelopment agreement, substantially in the form on file with the Office of the Borough Clerk (the "**Redevelopment Agreement**"), for the purpose of setting forth the respective rights and responsibilities of the Borough and the Entity with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Keyport, in the County of Monmouth, State of New Jersey, as follows:

1. The foregoing recitals are incorporated as though set forth at length.
2. The Entity is hereby designated as the Redeveloper for the Project Area.
3. The Mayor is hereby authorized to execute the Redevelopment Agreement in substantially the same form on file with the Office of the Borough Clerk, with such deletions, additions, and other modifications as deemed appropriate by the Mayor, in consultation with counsel.
4. The Mayor is further authorized to take all actions necessary, and to prepare, negotiate and execute any other documents or agreements necessary or required, to effectuate the terms of this Resolution.
5. This Resolution shall take effect immediately.

OFFERED:

SECONDED:

AYES:

NAYS:

ABSENT:

I, Michele Clark, Borough Clerk, do hereby certify that this is a true copy of the Resolution adopted by the Mayor and Council of the Borough of Keyport at the Regular Council Meeting of December 15, 2020.

Michele Clark, RMC
Borough Clerk

REDEVELOPMENT AGREEMENT

By and Between

THE BOROUGH OF KEYPORT,

as Redevelopment Entity

and

HUDSON POINTE AT KEYPORT, LLC

as Redeveloper

Dated: October __, 2020

THIS REDEVELOPMENT AGREEMENT (this “**Redevelopment Agreement**” or this “**Agreement**”) is made as of September ____, 2020 by and between:

THE BOROUGH OF KEYPORT, a municipal corporation of the State of New Jersey, having its offices at 70 West Front Street, Keyport, New Jersey 07735, in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (the “**Borough**”);

AND

HUDSON POINTE AT KEYPORT, LLC, a limited liability company having its offices at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, the “**Redeveloper**”). The Borough and Redeveloper may herein be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (as amended, the “**Redevelopment Law**”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of rehabilitation or redevelopment; and

WHEREAS, pursuant to and in accordance with the Redevelopment Law, on February 20, 2007 the Borough Council of the Borough (the “**Council**”) adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, the Council, pursuant to and in accordance with the requirements of the Redevelopment Law, adopted Resolution # 256-18 on December 18, 2018 designating certain properties within the Borough as a condemnation area in need of redevelopment (the “**Redevelopment Area**”); and

WHEREAS, Redeveloper is the contract purchaser of a portion of the Redevelopment Area identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough and commonly known as 75 Manchester Avenue, and Block 130, Lot 52, commonly known as 1 Maple Place, all as more specifically set forth on the survey and metes and bounds description attached hereto as Exhibit A (the “**Project Area**”); and

WHEREAS, pursuant to the Redevelopment Law, on September 15, 2020, the Council adopted Ordinance 9-20 implementing a redevelopment plan for the Project Area entitled “Hudson Pointe Redevelopment Plan” (as may be amended and supplemented, the “**Redevelopment Plan**”); and

WHEREAS, Redeveloper proposes to develop, finance, construct and implement a project on the Project Area including: (i) a residential complex with forty-eight (48) units, which shall consist of no fewer than 4 one-bedroom and one-bathroom units, and no more than 44 two-bedroom and two-bathroom units; (ii) six (6) duplexes with each duplex containing two units with each unit having three bedrooms and 2.5 bathrooms; (iii) two (2) single family homes with 4 bedrooms and 2.5 bathrooms; (iv) one (1) two-family home; (v) a 3,500 square foot clubhouse;

(vi) a 1,200 square foot recreational area with a gazebo; (vii) 124 on-site parking spaces; and (viii) 11 parking spaces located on Maple Place to replace the industrial building currently located at 75 Manchester Avenue and a two-family home at the terminus of Maple Place as required or permitted by the Redevelopment Plan (collectively, the "Project"); and

WHEREAS, in order to effectuate the Redevelopment Plan, the Project, and the redevelopment of the Project Area, the Council desires to designate Redeveloper as the "redeveloper" of the Project Area and enter into this Redevelopment Agreement specifying the respective rights and responsibilities of the Parties with respect to the Project; and

WHEREAS, pursuant to Resolution [____], adopted on [____], the Council authorized the execution of this Redevelopment Agreement and the designation of Redeveloper as redeveloper of the Redevelopment Area.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree, each with the other, as follows:

ARTICLE 1 DEFINITIONS

1.01. Definitions. As used in this Redevelopment Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Redevelopment Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Redevelopment Agreement unless otherwise specified.

(a) The following terms shall have the definitions ascribed to them herein:

"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.

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

"Appeal Period" means the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

"Applicable Laws" means all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

"Bond" shall have the meaning set forth in Section 4.04(b).

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

"Borough Costs" means (i) all reasonable outside professional and consultant fees, out of pocket costs or expenses incurred by the Borough arising out of or in connection with the negotiation, preparation, performance, administration, or enforcement of the Redevelopment Plan, this Redevelopment Agreement, the Project, or any other agreement or instrument related thereto, including all planning, legal, engineering and/or financial advisor costs incurred prior to the Effective Date and from the Effective Date of this Redevelopment Agreement forward; (ii) litigation costs arising out of or in connection with a dispute with a third party with respect to this Redevelopment Agreement or the Project, or any agreement or instrument related thereto; and (iii) any other out of pocket fee, cost or expense reasonably incurred by the Borough, after the date of this Agreement, to satisfy its obligations under this Agreement or in furtherance of the Project, but shall not include any and all costs incurred in connection with Redeveloper's site plan application to the Planning Board and governed by the escrow deposited by Redeveloper in connection with such application in accordance with the MLUL.

"Building Permit" means a building permit issued by or on behalf of the Borough for construction of any portion of the Project, excluding demolition permits but including footings and foundation permits.

"Business Days" means all days except Saturdays, Sundays and the days observed as public holidays by the Borough.

"Certificate of Completion" means written acknowledgement by the Borough in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Redevelopment Agreement, substantially in the form annexed hereto as Exhibit B.

"Certificate of Occupancy" means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Borough and the applicable provisions of the Uniform Construction Code.

"Commencement," "Commence Construction," "Commencement of Construction," or "Commencement Date" means the undertaking of any actual physical construction of any portion of the Project, including demolition, site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure.

"Completion," "Completion of Construction," "Complete Construction," or "Completion Date" means the completion of construction of the Project in accordance with the Redevelopment Plan and this Redevelopment Agreement, including but not limited to work sufficient for issuance of a Certificate of Occupancy and subject only to installation of landscaping, if the delay in completion thereof is necessitated by seasonal concerns.

"Completion Notice" means written notification, provided by or on behalf of Redeveloper to the Borough, of Completion of Construction of the Project and request by Redeveloper for the issuance by the Borough of a Certificate of Completion.

"Concept Plan" means the architectural plans and drawings attached as Exhibit D.

"Construction Event of Default" shall have the meaning set forth in Section 5.01(f).

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

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

"County" means Monmouth County, New Jersey.

"Declaration of Covenants and Restrictions" or "Declaration of Restrictions" means a written instrument to be executed by Redeveloper and recorded in the Monmouth County Clerk's Office, substantially in the form annexed hereto as Exhibit C, intended to encumber the Project Area and to run with the Project Area until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article 3.

"Effective Date" means the date this Redevelopment Agreement is executed by the Borough and the Redeveloper.

"Environmental Laws" means all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11 et seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6 et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.); and the rules and regulations promulgated under any of the foregoing.

"Escrow Account" shall have the meaning set forth in Section 6.02(a).

"Escrow Deposit" shall have the meaning set forth in Section 6.02(a).

"Estoppel Certificate" shall have the meaning set forth in Section 8.12.

"Event of Default" shall have the meaning set forth in Section 5.01.

"Existing Members" means the Persons owning membership interests in the Redeveloper as of the date of this Agreement, which Persons are set forth in Exhibit F annexed hereto.

"Force Majeure Event" means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials; and severe economic, financial or market conditions affecting the region (and not unique to the Project) that inhibits the procurement of financing for the Project or that renders the development and marketing of the Project on the terms set forth in the Redevelopment Agreement economically infeasible (provided that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

"Foreclosure" shall have the meaning set forth in Section 7.03(b).

"Governmental Approvals" means all governmental approvals required for the Commencement of Construction, Completion of Construction, and use and occupancy of the Project, including, without limitation, the Planning Board Approvals, as defined below; County planning board approvals, if and to the extent required; Building Permits; environmental permits, approvals, consents or authorizations from NJDEP and any other applicable governmental agencies; sewerage capacity approvals, utilities-related permits and any and all other necessary governmental permits, licenses, consents and approvals.

"Improvements" means all improvements constructed as part of the Project.

"Institution" means any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employees' welfare, pension or retirement system or any corporation or entity subject to supervision and regulation by the insurance or banking departments of the State or of the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments, or any Affiliate of the foregoing.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Mortgage" means any security interest, evidenced by a written instrument, encumbering the Project Area, or any portion thereof, that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

"Mortgagee" means the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successors in interest.

"Notice" shall have the meaning set forth in Section 8.08.

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

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

"Permitted Transfers" shall have the meaning set forth in Section 3.05(b).

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

"Planning Board" means the Keyport Unified Planning Board.

"Planning Board Approvals" means preliminary and final site plan approval, with conditions, deviations and waivers, of the Concept Plans as described at Exhibit D attached hereto.

"Progress Report" shall have the meaning set forth in Section 4.03(b) and shall be submitted in the form attached hereto as Exhibit G attached hereto.

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

"Project Area" shall have the meaning set forth in the Recitals.

"Project Area Closing" means the acquisition of the Project Area by the Redeveloper, which shall take place as set forth in Section 4.01 herein.

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

"Redevelopment Area" shall have the meaning set forth in the Recitals.

"Redevelopment Entity" means the Borough acting in its capacity as a redevelopment entity pursuant to the Redevelopment Law and any permitted successors or assigns.

"Redevelopment Law" shall have the meaning set forth in the Recitals.

"Redevelopment Plan" shall have the meaning set forth in the Recitals.

"Remediate" or "Remediation" means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of hazardous substances, known or unknown, on, under, or migrating to or from the Project Area, in accordance with Applicable Law, environmental laws and Governmental Approvals.

"State" means the State of New Jersey.

"Transfer" means, prior to Completion of the Project, (i) a sale or re-conveyance of all or any portion of the Project Area or Project by Redeveloper to any other Person, (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of Redeveloper as it exists on the date of this Redevelopment Agreement, (iii) a transfer of ten percent (10%) or more of the membership interest in Redeveloper to a Person other than an Institution, or (iv) any assignment of this Redevelopment Agreement to any other Person.

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

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

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

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

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

(e) 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.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

2.01. Designation as Redeveloper. The Borough hereby designates and appoints the Redeveloper as redeveloper of the Project on the Project Area. For so long as this Redevelopment Agreement and the designation hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Project Area in accordance with the Redevelopment Plan, the Governmental Approvals, the Redevelopment Law and all other Applicable Laws, and the terms and conditions of this Redevelopment Agreement.

2.02. Representations and Warranties of the Borough. The Borough hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The Borough is a municipal corporation, duly organized and existing under the laws of the State, and as such, has the legal power, right and authority pursuant to the Redevelopment Law to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) The Borough has authorized the execution of this Redevelopment Agreement by resolution and has duly executed this Redevelopment Agreement.

(d) To the best of the Borough's knowledge, 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 Redevelopment Agreement.

(e) This Redevelopment Agreement has been 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 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.

(f) The Borough represents that, to the best of its knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which questions the validity of the Redevelopment Plan or this Redevelopment Agreement, or any action or act taken or to be taken by the Borough pursuant to the Redevelopment Plan or Redevelopment Agreement.

2.03. Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of the State and all necessary consents have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

(c) 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 the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the 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 the Redeveloper has been filed.

(e) No indictment has been returned against Redeveloper or any officer or shareholder of Redeveloper.

(f) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(g) Subject to obtaining construction financing, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project. Prior to the Commencement of the Project, Redeveloper will have sufficient unrestricted equity on hand and financing in place to complete the same.

(h) To the best of Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Redevelopment 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 pursuant to the terms of this Redevelopment Agreement.

(i) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(j) To the best of Redeveloper's knowledge and belief, after diligent inquiry, all information and statements included in any information submitted to the Borough and its agents, including but not limited to, McManimon, Scotland & Baumann, LLC, are true and correct in all respects. Redeveloper acknowledges that the facts and representations contained in the

information, submitted by Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(k) To the best of Redeveloper's knowledge and belief, after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Borough for any property situated in the Borough.

2.04. 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 3 COVENANTS AND RESTRICTIONS

3.01. Covenants and Restrictions. Redeveloper agrees to record the Declaration of Restrictions with the Monmouth County Clerk's Office concurrently with the Project Area Closing.

3.02. Description of Covenants. The following covenants and restrictions are imposed upon, and are intended to run with, the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided, and shall be recorded in substantially the form of the Declaration of Covenants and Restrictions annexed hereto as Exhibit C:

(a) Redeveloper shall construct the Project on the Project Area in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals.

(b) Except for Permitted Transfers, and subject to the terms hereof, prior to the issuance of a Certificate of Completion, the Redeveloper shall not effect a Transfer without the written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed.

(c) In connection with its use and occupancy of the Project, the Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Area is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, 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) Subject to and in accordance with the terms hereof, upon Completion of Construction, Redeveloper shall obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and use of such portion of the Project Area and/or Project shall only be used for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan.

(e) Subject to and in accordance with the terms hereof, Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense (as between the Borough and Redeveloper).

(f) Subject to and in accordance with the terms hereof, Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, and this Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, the Redeveloper shall not encumber, hypothecate or otherwise use the Project Area, or any part thereof, as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay any and all taxes, service charges or similar obligations when owed with respect to the Project Area and any other property owned by Redeveloper situated in the Borough.

3.03. Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.02 shall be covenants running with the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. All covenants in Section 3.02, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Borough and its successors and assigns, against Redeveloper, its successors and assigns, and any successor in interest to the Project Area and any party in possession or occupancy of the Project Area, from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. The agreements and covenants set forth in Section 3.02 shall cease and terminate upon the issuance of a Certificate of Completion, substantially in the form annexed hereto as Exhibit B, provided, however, that the covenants in Section 3.02(c) shall remain in effect without limitation as to time.

3.04. Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 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 shall 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 to or in favor of which such agreements and covenants relate.

3.05. Prohibition Against Transfers of Interests in Redeveloper.

(a) Redeveloper recognizes the importance of this redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement. The Borough considers that a change of Control in Redeveloper, or the transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes, a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Redevelopment Agreement with Redeveloper, and, in so doing, the Borough is relying on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder. As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Borough, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution.

(b) Consent to Permitted Transfers. The Borough hereby consents, without the necessity of further actions or approvals, to the following Transfers (each, a "Permitted Transfer"):

(i) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least thirty (30) days' prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee;

(ii) Transfers of easements or dedications of portions or interests in the Project Area as may be required for utilities for the Project, or otherwise as conditions of Governmental Approvals, including but not limited to any sanitary sewer easement required by the Planning Board Approvals;

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

(iv) a lease agreement to a third party tenant or end user of the Project, or a purchase agreement to a third party buyer of a sub-condominium unit in the Project with the end user thereof, or the undertaking of construction or fit-out of any portion of the Project with or by

a third party tenant, buyer, or end user (or related party of any of the foregoing) of any portion of the Project;

(v) a Transfer to an Affiliate of the Redeveloper, to one of the Existing Members, or to an entity controlled by one or more of the Existing Members;

(vi) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure;

(vii) Redeveloper's acquisition of fee title to the Project Area; or

(viii) any contract or agreement with respect to any of the foregoing.

(c) Approval of Transfer. Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 3.05, the Borough shall not unreasonably withhold, condition or delay its consent to such Transfer. The Borough shall not withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

3.06. Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough agrees to reasonably cooperate with the Redeveloper in obtaining Governmental Approvals for the Project. The Borough agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan (including any deviations or waivers required for the Concept Plan as described on Exhibit D hereto), this Agreement and Applicable Laws, and to execute and deliver any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 3.06(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any governmental authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. 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.

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

(c) The Borough shall not amend or cause the amendment of the Redevelopment Plan in a manner that materially, adversely affects Redeveloper or the Project during the term of this Agreement without the prior written consent of the Redeveloper.

(d) The Redeveloper has been duly designated as the exclusive redeveloper of the Project Area and shall have the exclusive right and obligation to redevelop the Project Area and

implement the Project in accordance with, and subject to, the terms and conditions of this Agreement and the Redevelopment Plan.

ARTICLE 4 PROJECT DETAILS

4.01. Timeline and Implementation of the Project. The Redeveloper shall design, finance, undertake, implement and construct the Project in accordance with this Agreement and the Redevelopment Plan and as set forth as follows:

(a) Project Timeline.

(i) Redeveloper shall make application to the Planning Board for preliminary and final site plan and subdivision approval for the Project no later than thirty (30) days after the Effective Date and shall diligently prosecute the same.

(ii) The Project Area Closing is anticipated to occur within one hundred and eighty (180) days after the Effective Date. Redeveloper shall diligently pursue the Project Area Closing and shall notify the Borough in writing of any extension of the date of the Project Area Closing, including the reason therefor. Notwithstanding the foregoing, if the Project Area Closing does not occur within two hundred and seventy (270) days of the Effective Date, then the Borough may terminate this Agreement.

(iii) Redeveloper shall pursue all Governmental Approvals required for the Commencement of Construction of the Project and shall obtain all Governmental Approvals for the Completion of Construction and use and occupancy of the Project. Redeveloper shall file all applications for Governmental Approvals within ninety (90) days of the Borough Planning Board's adoption of the resolution granting preliminary and final site plan and subdivision approval and shall diligently prosecute the same.

(iv) Redeveloper shall Commence Construction of the Project within ninety (90) days after the Project Area Closing or the procurement of all required Governmental Approvals relating thereto, whichever occurs later.

(v) Redeveloper shall use commercially reasonable efforts to achieve Completion of Construction on or before a date that is eighteen (18) months following Commencement of Construction.

(b) If, subject to the provisions of this Agreement, the Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project timeline set forth above, for any reason, the Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure or anticipated failure, (ii) the Redeveloper's proposed method for correcting such failure, (iii) the Redeveloper's proposal for revising the timeline, and (iv) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project timeline.

(c) In the event that Redeveloper does not obtain all necessary Governmental Approvals for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Borough. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 4.01(c) then except as expressly set forth herein to the contrary, this Agreement shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

4.02. Construction of the Project.

(a) Construction Hours. Construction practices and hours shall be in accordance with Borough Ordinances, which are available at the Borough Building Department or through the Borough Clerk.

(b) Maintenance. The Project Area will be cleaned on a regular basis by Redeveloper; provided, however, that Redeveloper agrees to clean the Project Area within twenty-four (24) hours of a specific, reasonable request by the Borough that Redeveloper do so or the close of the following Business Day, whichever is later. Should Redeveloper fail to comply with this obligation, the Borough will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project. 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.

(c) Pedestrian Access and Safety. The Borough acknowledges that for safety reasons, the sidewalks adjacent to the Project Area may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Borough Building Department plans and specifications providing for pedestrian safety at and across the Project Area as applicable. The Redeveloper shall keep the sidewalks abutting the Project Area clean and free of debris, ice and snow during the construction of the Project.

(d) Construction Parking. The Redeveloper shall make arrangements with the Borough Construction Official and the Borough Police Department for off-street parking for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Project Area. The Borough agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

(e) Preconstruction Meeting. There shall be a preconstruction meeting held at least seven (7) days prior to the Commencement of Construction of the Project, which meeting shall include the Borough Construction Official, the Borough Engineer, a representative from the Borough Police Department, a representative from the Borough Fire Department and representatives from the various applicable utility companies.

(f) 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.

(g) 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 4.

(h) 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.

(i) 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.

(j) 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.

4.03 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, or via electronic means. A 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 G).

(c) The Borough reserves 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 4.03(c) be deemed acceptance of the work or deemed to waive any right the Borough has under this Redevelopment 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 Redevelopment Agreement.

4.04. Certificates of Occupancy and Certificates of Completion.

(a) Upon the Completion of Construction of the Project or any portion thereof, Redeveloper shall apply to Borough Construction Code Official for a Certificate of Occupancy.

(b) Following the Completion of the Project, the Borough agrees to issue a Certificate of Completion upon receipt of a Completion Notice from Redeveloper. Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project in this Redevelopment Agreement and the Redevelopment Plan. Within thirty (30) days after receipt of a Completion Notice, the Borough shall provide Redeveloper with the Certificate of Completion or 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 or is otherwise in default hereunder.

4.05. Project Costs, Financing and Performance and Maintenance Guarantees.

(a) Redeveloper agrees that, as between the Borough and Redeveloper, the costs and financing for the Project are the sole responsibility of the Redeveloper, not the Borough. 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. 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 Project Area, the cost of designing and constructing all Improvements, all financing costs, all marketing and leasing costs for the Improvements, and the Borough 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) 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.

4.06. Environmental Obligations. The Parties hereby expressly acknowledge that the Borough has made no representation as to the environmental condition of any part of the Project Area. The Parties hereto further expressly acknowledge and agree that to the extent any portion of the Project Area requires Remediation, or causes any other property to require Remediation, the Borough shall have no responsibility therefor. The Parties hereto expressly agree and acknowledge that it shall be the sole responsibility of the Redeveloper to undertake and pay the cost of any and all Remediation, compliance, environmental testing, and/or other analyses for the Project Area, and that the Borough has no obligation or liability whatsoever with respect to the environmental condition of the Project Area, or any other parcels which may claim contamination arising from the Project Area. Redeveloper shall defend, protect, indemnify and hold harmless the Borough and its agents from any claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Project Area, including without limitation, claims against the Borough and its agents by any third party.

4.07. No Rights in Third-Party Beneficiaries. This Agreement does not and will not confer any rights, remedies or entitlements upon any third person or entity other than the Parties and their respective successors and assigns. This Agreement is for the exclusive benefit and convenience of the Parties hereto.

ARTICLE 5
EVENTS OF DEFAULT; TERMINATION

5.01. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Redevelopment Agreement:

(a) Redeveloper (i) fails to perform its obligations with respect to the Project Area Closing or the implementation of the Project in accordance with this Redevelopment Agreement, including but not limited to failure to Commence Construction or Complete Construction in accordance with this Redevelopment Agreement; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Borough.

(b) If at any time Redeveloper shall: (i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or (ii) make an assignment for the benefit of creditors; or (iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or state or other statute or law; or (v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of Redeveloper or of all or any substantial part of its property or of the Project Area or any interest of Redeveloper therein; or (vi) take any corporate action in furtherance of any action described in this subsection; or (vii) if at any time any proceeding against Redeveloper seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of Redeveloper of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of Redeveloper, or of all or any substantial part of its properties or of the Project Area or any interest of Redeveloper therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty-five (45) days after the expiration of any such stay;

(c) Redeveloper's failure to pay or delinquency in the payment of payments in lieu of taxes, real property taxes or assessments, which failure or delinquency is not cured within ten (10) days, and for which no Notice under this Agreement shall be required. Redeveloper's failure to make any other payment due to the Borough under this Agreement, which failure or delinquency is not cured within ten (10) days after Notice by the Borough;

(d) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Borough, which failure or delinquency is not cured within thirty (30) days after Notice by the Borough;

(e) Any Transfer (except for Permitted Transfers) without the approval (or deemed approval pursuant to Section 3.05(c)) of the Borough;

(f) Any other default or breach by Redeveloper or the Borough in the observance or performance of any covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified below, the continuance of such default or breach for a period of thirty (30) consecutive days after Notice from the non-defaulting Party specifying the nature of such default or breach and requesting that such default or breach be remedied; provided, however, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting Party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than one hundred (120) days after such Notice unless this Redevelopment Agreement specifically provides otherwise; or

(g) Construction Event of Default. Any of the following shall be a "Construction Event of Default":

(i) if Redeveloper fails to Commence Construction of the Project within the time frames specified in this Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure); or

(ii) if Redeveloper abandons the Project or substantially suspends construction on the Project after obtaining a Building Permit or Commencement of Construction relating thereto without the prior knowledge and consent of the Borough for more than ninety (90) consecutive days (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension under clauses (i) or (ii) shall not be cured, ended, or remedied within sixty (60) days after receipt by the Redeveloper of Notice of such failure, abandonment or suspension; provided, however, that if the failure, abandonment or suspension is one that cannot be completely cured within sixty (60) days after receipt of such Notice, it shall not be a Construction Event of Default as long as the Redeveloper has begun to take actions to correct the failure, abandonment or suspension upon its receipt of Notice thereof and is proceeding with due diligence to remedy the failure, abandonment or suspension as soon as reasonably practicable.

5.02. Remedies Upon Event of Default by the Redeveloper. Whenever any Event of Default by the Redeveloper shall have occurred, the Borough may, on written Notice to Redeveloper (after applicable Notice and cure periods shall have expired), terminate this Redevelopment Agreement and Redeveloper's designation as Redeveloper, and upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect, and neither Party shall have any further rights, liability and/or obligations hereunder, except with respect to those provisions which survive this Agreement. In addition, if Redeveloper fails to pay any Borough Costs in accordance with the requirements of this Agreement, the Borough may file legal action seeking payment of the Borough Costs.

5.03. Remedies Upon Event of Default by the Borough. If an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as Redeveloper may deem necessary or desirable to enforce the performance or observance of any rights or

remedies of Redeveloper, or any obligations, agreements, or covenants of the Borough under this Redevelopment Agreement, including an action for specific performance and/or actual, compensatory damages (but specifically excluding delay, reliance, consequential or punitive damages). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, on written Notice to the Borough (after applicable Notice and cure period shall have expired), to terminate this Redevelopment Agreement and, upon full payment of all Borough Costs accruing until the date of such termination and except as expressly provided for herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liabilities and/or obligations hereunder.

5.04. Force Majeure Extension. For the purposes of this Redevelopment Agreement, neither the Borough nor Redeveloper shall be considered in breach or in default with respect to their respective obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Borough or Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of the Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Borough or Redeveloper from declaring a default or the occurrence of an Event of Default by the other Party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

5.05. No Waiver. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party hereunder in asserting any of its rights or remedies as to any default by the other Party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Borough or the Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.06. Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

ARTICLE 6 PROJECT AREA CLOSING; ESCROW ACCOUNT

6.01. Project Area Closing. In the event that the Project Area Closing does not occur

within the timeframe set forth in Section 4.01 herein, Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Borough and, upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

6.02 Escrow Account to Cover Borough Costs.

(a) Concurrent with the execution of this Agreement, the Redeveloper has established with the Borough an escrow account (the "**Escrow Account**") having an initial balance of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to cover Borough Costs (the "**Escrow Deposit**"). Attached to this Agreement as Exhibit E is a description of the agreed upon procedure to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom, which is incorporated herein by reference.

(b) Also concurrent with the execution of this Agreement, the Redeveloper shall pay over to the Borough the amount of TWENTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$22,600.00) in order to defray professional costs previously incurred by the Borough in connection with the Project.

ARTICLE 7
FINANCING

7.01. Mortgage Financing.

(a) Neither Redeveloper nor any successor in interest to Redeveloper or the Project Area, or any part thereof, shall engage in any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Project Area, 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 Project Area, 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 3.05(b)(i) 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 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, except for a Permitted Transfer pursuant to Section 3.05(b) 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 Project Area, whether by voluntary act of Redeveloper or otherwise, upon obtaining actual knowledge or notice of same.

(b) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Mortgagee and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and

adversely alter or modify the rights and obligations of the Redeveloper or the Borough, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the 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 Mortgagee (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Borough under this Redevelopment Agreement.

7.02. Notice of Default to the Mortgagee and Right to Cure. Whenever the Borough shall deliver any Notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Mortgagee a copy of such Notice or demand; provided that the Redeveloper has delivered to the Borough a written Notice of the name and address of such Mortgagee. Each such Mortgagee (insofar as the rights of the Borough are concerned) has the right at its option within sixty (60) days after the receipt of such Notice (and the expiration of all applicable cure periods), 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. The Borough shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60-day period but has not completed such cure, then, not later than every sixty (60) days thereafter until such Event of Default is cured, Redeveloper shall inform the Borough that the Mortgagee is proceeding diligently to cure the Redeveloper Event of Default, and shall briefly describe the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Borough may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after Notice thereof. If possession of the Project or the Project Area is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Project or the Project Area.

7.03. No Guarantee of Construction or Completion by Mortgagee.

(a) A Mortgagee shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project, or to guarantee such construction or Completion thereof; nor shall any covenant or any other provisions be construed so as to obligate a Mortgagee. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or Completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security, including the improvements or construction already made) without the Mortgagee or Affiliate of Mortgagee first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough.

(b) If a Mortgagee forecloses its Mortgage secured by the Project (or portion thereof), or takes title (in its name or the name of an Affiliate) to the Project (or portion thereof) by deed-

in-lieu of foreclosure or similar transaction (collectively, a "**Foreclosure**"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project (or condominium unit thereof) to any Person, provided Mortgagee gives the Borough notice of such sale at least twenty (20) days prior to closing and provided such Person assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. The Mortgagee, or the entity assuming the obligations of the Redeveloper, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of any deadlines hereunder. Any such Mortgagee, or other entity assuming such obligations of the Redeveloper, upon completing the Project shall be entitled, upon written request made to the Borough, to a Certificate of Completion in accordance with the terms of this Agreement. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Mortgagee, or such other entity assuming such obligations of the Redeveloper, to devote any portion of the Project Area to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project in accordance herewith.

7.04. Estoppel Certificates. Within fourteen (14) days following written request therefor by a Party hereto (which request may be on behalf of any Mortgagee, purchaser, tenant or other party having an interest in the Project Area), the other Party shall issue a signed certificate ("**Estoppel Certificate**") stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no Event of Default under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in an Event of Default under this Redevelopment Agreement), or stating the nature of the Event of Default or other such event, if any, and (iii) any other matter reasonably requested. No more than three (3) Estoppel Certificates per year may be requested by each Party.

ARTICLE 8 INSURANCE

8.01. General Requirements. From and after the Effective Date, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Project 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.

8.02. Insurance Required.

(a) 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. 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 Project 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 Mortgagee), 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.

8.03. Other Insurance. To the extent required by any Project tenant, or that Redeveloper obtains financing for the Project and such lender or Mortgagee 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 8 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 9 MISCELLANEOUS

9.01. No Consideration for 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 Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

9.02. Non-Liability of Officials and Employees.

(a) 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 Redevelopment Agreement.

(b) No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

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

9.04. Recitals and Exhibits. The Recitals and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

9.05. Entire Agreement. This Redevelopment 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 hereof.

9.06. Severability. The validity of any Article and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

9.07. Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the Borough, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third-party claims, liabilities, losses, costs,

damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, provided, however, that no indemnification shall be required pursuant to this Section 9.07 in the event that the indemnification otherwise due pursuant to this Section 9.07 is attributable to the gross negligence or willful misconduct of the Borough, its governing body, or any agency of the Borough or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section shall survive termination of this Agreement.

9.08. Notices. A notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other ("**Notice**") shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Borough:

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

With a copy to:

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

As to the Redeveloper:

Hudson Pointe at Keyport, LLC
P.O. Box 66
Colts Neck, New Jersey 07722
Attn: []

With a copy to:

Salvatore Alfieri, Esq.
Cleary, Giacobbe, Alfieri & Jacobs, LLC
95 State Route 34, Suite 200
Matawan, New Jersey 07747

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) days' Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any notice delivered by telecopy shall be deemed to have been received by such Party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any notice given by an attorney for a Party shall be effective for all purposes.

9.09. Further Assurances/Cooperation. The Parties shall cooperate with each other as reasonably necessary to effectuate the Project. From time to time at the request of either Redeveloper or the Borough, the other Party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Redevelopment Agreement.

9.10. Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Redevelopment Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Monmouth County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Monmouth County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum. The Parties further agree that any claims relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury.

9.11. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.

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.

ATTEST:

BOROUGH OF KEYPORT

Michele Clark, Borough Clerk

By: _____
Collette J. Kennedy, Mayor

WITNESS:

HUDSON POINTE AT KEYPORT, LLC

Name: SALVATORE ALFIERI
ATTORNEY AT LAW OF N.J.

By: _____
Name: John Kling
Title: Manager

EXHIBIT A
PROJECT AREA SURVEY AND METES & BOUNDS DESCRIPTION

[To be attached]

EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

Prepared by:

CERTIFICATE OF COMPLETION

[Date]

HUDSON POINTE AT KEYPORT, LLC
P.O. Box 66
Colts Neck, New Jersey 07722

Project: Hudson Pointe at Keyport
Location: Block 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52

In accordance with Section 3.03 of that certain Redevelopment Agreement entered into by the Borough of Keyport (the "**Borough**") and Hudson Pointe at Keyport, LLC (the "**Redeveloper**"), dated as of [], 2020 (the "**Agreement**"), this letter shall serve as acknowledgment that Redeveloper has performed all of its duties and obligations with respect to the Project (as such term is defined in the Agreement) under the Agreement and has completed construction of the Project in accordance with the requirements of the Agreement.

This Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the Redeveloper's obligations, responsibilities and covenants under the Agreement, except for Section 3.02(c), and the escrow procedures provided in Exhibit E thereof, which by the terms of the Agreement shall survive such termination and remain in effect for the time set forth therein. The conditions that were found and determined to exist with respect to the Project Area (as defined in the Agreement) at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist.

The Declaration of Covenants And Restrictions recorded in the Monmouth County Clerk's Office on [] in deed book [], page [] (the "**Declaration**") is hereby discharged of record and is void and of no further force and effect, except with respect to Section 2(C) of the Declaration, which remains in effect without limitation as to time.

Very truly yours,

BOROUGH OF KEYPORT

By: _____
Name:
Title:

EXHIBIT C

FORM OF DECLARATION OF COVENANTS

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 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52
in the Borough of Keyport,
County of Monmouth (the "Property")**

This Declaration of Covenants and Restrictions ("**Declaration**") is made this ____ day of _____, 2020 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

HUDSON POINTE AT KEYPORT, LLC, a limited liability company qualified to do business in the State of New Jersey, having an address at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, referred to as the "**Redeveloper**");

WITNESSETH:

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, in accordance with the LRHL, on February 20, 2007 the Borough Council of the Borough (the "**Borough Council**") adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, in accordance with the LRHL, on December 18, 2018 the Borough Council adopted Resolution No. 256-18 designating certain properties within the Borough as an area in need of redevelopment, including certain properties identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough (together with Block 130, Lot 52, the "**Properties**"); and

WHEREAS, the Borough Council 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 Borough Council duly adopted a resolution authorizing the execution of a redevelopment agreement with the Redeveloper dated _____, 20__ (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

REDEVELOPMENT AGREEMENT

By and Between

THE BOROUGH OF KEYPORT,

as Redevelopment Entity

and

HUDSON POINTE AT KEYPORT, LLC

as Redeveloper

Dated: October ____, 2020

THIS REDEVELOPMENT AGREEMENT (this “Redevelopment Agreement” or this “Agreement”) is made as of September ____, 2020 by and between:

THE BOROUGH OF KEYPORT, a municipal corporation of the State of New Jersey, having its offices at 70 West Front Street, Keyport, New Jersey 07735, in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (the “Borough”);

AND

HUDSON POINTE AT KEYPORT, LLC, a limited liability company having its offices at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, the “Redeveloper”). The Borough and Redeveloper may herein be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (as amended, the “Redevelopment Law”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of rehabilitation or redevelopment; and

WHEREAS, pursuant to and in accordance with the Redevelopment Law, on February 20, 2007 the Borough Council of the Borough (the “Council”) adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, the Council, pursuant to and in accordance with the requirements of the Redevelopment Law, adopted Resolution # 256-18 on December 18, 2018 designating certain properties within the Borough as a condemnation area in need of redevelopment (the “Redevelopment Area”); and

WHEREAS, Redeveloper is the contract purchaser of a portion of the Redevelopment Area identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough and commonly known as 75 Manchester Avenue, and Block 130, Lot 52, commonly known as 1 Maple Place, all as more specifically set forth on the survey and metes and bounds description attached hereto as Exhibit A (the “Project Area”); and

WHEREAS, pursuant to the Redevelopment Law, on September 15, 2020, the Council adopted Ordinance 9-20 implementing a redevelopment plan for the Project Area entitled “Hudson Pointe Redevelopment Plan” (as may be amended and supplemented, the “Redevelopment Plan”); and

WHEREAS, Redeveloper proposes to develop, finance, construct and implement a project on the Project Area including: (i) a residential complex with forty-eight (48) units, which shall consist of no fewer than 4 one-bedroom and one-bathroom units, and no more than 44 two-bedroom and two-bathroom units; (ii) six (6) duplexes with each duplex containing two units with each unit having three bedrooms and 2.5 bathrooms; (iii) two (2) single family homes with 4 bedrooms and 2.5 bathrooms; (iv) one (1) two-family home; (v) a 3,500 square foot clubhouse;

(vi) a 1,200 square foot recreational area with a gazebo; (vii) 124 on-site parking spaces; and (viii) 11 parking spaces located on Maple Place to replace the industrial building currently located at 75 Manchester Avenue and a two-family home at the terminus of Maple Place as required or permitted by the Redevelopment Plan (collectively, the "Project"); and

WHEREAS, in order to effectuate the Redevelopment Plan, the Project, and the redevelopment of the Project Area, the Council desires to designate Redeveloper as the "redeveloper" of the Project Area and enter into this Redevelopment Agreement specifying the respective rights and responsibilities of the Parties with respect to the Project; and

WHEREAS, pursuant to Resolution [____], adopted on [____], the Council authorized the execution of this Redevelopment Agreement and the designation of Redeveloper as redeveloper of the Redevelopment Area.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree, each with the other, as follows:

ARTICLE 1 DEFINITIONS

1.01. Definitions. As used in this Redevelopment Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Redevelopment Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Redevelopment Agreement unless otherwise specified.

(a) The following terms shall have the definitions ascribed to them herein:

"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.

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

"Appeal Period" means the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

"Applicable Laws" means all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

"Bond" shall have the meaning set forth in Section 4.04(b).

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

"Borough Costs" means (i) all reasonable outside professional and consultant fees, out of pocket costs or expenses incurred by the Borough arising out of or in connection with the negotiation, preparation, performance, administration, or enforcement of the Redevelopment Plan, this Redevelopment Agreement, the Project, or any other agreement or instrument related thereto, including all planning, legal, engineering and/or financial advisor costs incurred prior to the Effective Date and from the Effective Date of this Redevelopment Agreement forward; (ii) litigation costs arising out of or in connection with a dispute with a third party with respect to this Redevelopment Agreement or the Project, or any agreement or instrument related thereto; and (iii) any other out of pocket fee, cost or expense reasonably incurred by the Borough, after the date of this Agreement, to satisfy its obligations under this Agreement or in furtherance of the Project, but shall not include any and all costs incurred in connection with Redeveloper's site plan application to the Planning Board and governed by the escrow deposited by Redeveloper in connection with such application in accordance with the MLUL.

"Building Permit" means a building permit issued by or on behalf of the Borough for construction of any portion of the Project, excluding demolition permits but including footings and foundation permits.

"Business Days" means all days except Saturdays, Sundays and the days observed as public holidays by the Borough.

"Certificate of Completion" means written acknowledgement by the Borough in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Redevelopment Agreement, substantially in the form annexed hereto as Exhibit B.

"Certificate of Occupancy" means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Borough and the applicable provisions of the Uniform Construction Code.

"Commencement," "Commence Construction," "Commencement of Construction," or "Commencement Date" means the undertaking of any actual physical construction of any portion of the Project, including demolition, site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure.

"Completion," "Completion of Construction," "Complete Construction," or "Completion Date" means the completion of construction of the Project in accordance with the Redevelopment Plan and this Redevelopment Agreement, including but not limited to work sufficient for issuance of a Certificate of Occupancy and subject only to installation of landscaping, if the delay in completion thereof is necessitated by seasonal concerns.

"Completion Notice" means written notification, provided by or on behalf of Redeveloper to the Borough, of Completion of Construction of the Project and request by Redeveloper for the issuance by the Borough of a Certificate of Completion.

"Concept Plan" means the architectural plans and drawings attached as Exhibit D.

"Construction Event of Default" shall have the meaning set forth in Section 5.01(f).

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

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

"County" means Monmouth County, New Jersey.

"Declaration of Covenants and Restrictions" or "Declaration of Restrictions" means a written instrument to be executed by Redeveloper and recorded in the Monmouth County Clerk's Office, substantially in the form annexed hereto as Exhibit C, intended to encumber the Project Area and to run with the Project Area until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article 3.

"Effective Date" means the date this Redevelopment Agreement is executed by the Borough and the Redeveloper.

"Environmental Laws" means all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11 et seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6 et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.); and the rules and regulations promulgated under any of the foregoing.

"Escrow Account" shall have the meaning set forth in Section 6.02(a).

"Escrow Deposit" shall have the meaning set forth in Section 6.02(a).

"Estoppel Certificate" shall have the meaning set forth in Section 8.12.

"Event of Default" shall have the meaning set forth in Section 5.01.

"Existing Members" means the Persons owning membership interests in the Redeveloper as of the date of this Agreement, which Persons are set forth in Exhibit F annexed hereto.

"Force Majeure Event" means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials; and severe economic, financial or market conditions affecting the region (and not unique to the Project) that inhibits the procurement of financing for the Project or that renders the development and marketing of the Project on the terms set forth in the Redevelopment Agreement economically infeasible (provided that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

"Foreclosure" shall have the meaning set forth in Section 7.03(b).

"Governmental Approvals" means all governmental approvals required for the Commencement of Construction, Completion of Construction, and use and occupancy of the Project, including, without limitation, the Planning Board Approvals, as defined below; County planning board approvals, if and to the extent required; Building Permits; environmental permits, approvals, consents or authorizations from NJDEP and any other applicable governmental agencies; sewerage capacity approvals, utilities-related permits and any and all other necessary governmental permits, licenses, consents and approvals.

"Improvements" means all improvements constructed as part of the Project.

"Institution" means any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employees' welfare, pension or retirement system or any corporation or entity subject to supervision and regulation by the insurance or banking departments of the State or of the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments, or any Affiliate of the foregoing.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Mortgage" means any security interest, evidenced by a written instrument, encumbering the Project Area, or any portion thereof, that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

"Mortgagee" means the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successors in interest.

"Notice" shall have the meaning set forth in Section 8.08.

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

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

"Permitted Transfers" shall have the meaning set forth in Section 3.05(b).

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

"Planning Board" means the Keyport Unified Planning Board.

"Planning Board Approvals" means preliminary and final site plan approval, with conditions, deviations and waivers, of the Concept Plans as described at Exhibit D attached hereto.

"Progress Report" shall have the meaning set forth in Section 4.03(b) and shall be submitted in the form attached hereto as Exhibit G attached hereto.

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

"Project Area" shall have the meaning set forth in the Recitals.

"Project Area Closing" means the acquisition of the Project Area by the Redeveloper, which shall take place as set forth in Section 4.01 herein.

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

"Redevelopment Area" shall have the meaning set forth in the Recitals.

"Redevelopment Entity" means the Borough acting in its capacity as a redevelopment entity pursuant to the Redevelopment Law and any permitted successors or assigns.

"Redevelopment Law" shall have the meaning set forth in the Recitals.

"Redevelopment Plan" shall have the meaning set forth in the Recitals.

"Remediate" or "Remediation" means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of hazardous substances, known or unknown, on, under, or migrating to or from the Project Area, in accordance with Applicable Law, environmental laws and Governmental Approvals.

"State" means the State of New Jersey.

"Transfer" means, prior to Completion of the Project, (i) a sale or re-conveyance of all or any portion of the Project Area or Project by Redeveloper to any other Person, (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of Redeveloper as it exists on the date of this Redevelopment Agreement, (iii) a transfer of ten percent (10%) or more of the membership interest in Redeveloper to a Person other than an Institution, or (iv) any assignment of this Redevelopment Agreement to any other Person.

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

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

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

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

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

(e) 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.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.01. Designation as Redeveloper. The Borough hereby designates and appoints the Redeveloper as redeveloper of the Project on the Project Area. For so long as this Redevelopment Agreement and the designation hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Project Area in accordance with the Redevelopment Plan, the Governmental Approvals, the Redevelopment Law and all other Applicable Laws, and the terms and conditions of this Redevelopment Agreement.

2.02. Representations and Warranties of the Borough. The Borough hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The Borough is a municipal corporation, duly organized and existing under the laws of the State, and as such, has the legal power, right and authority pursuant to the Redevelopment Law to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) The Borough has authorized the execution of this Redevelopment Agreement by resolution and has duly executed this Redevelopment Agreement.

(d) To the best of the Borough's knowledge, 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 Redevelopment Agreement.

(e) This Redevelopment Agreement has been 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 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.

(f) The Borough represents that, to the best of its knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which questions the validity of the Redevelopment Plan or this Redevelopment Agreement, or any action or act taken or to be taken by the Borough pursuant to the Redevelopment Plan or Redevelopment Agreement.

2.03. Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of the State and all necessary consents have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

(c) 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 the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the 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 the Redeveloper has been filed.

(e) No indictment has been returned against Redeveloper or any officer or shareholder of Redeveloper.

(f) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(g) Subject to obtaining construction financing, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project. Prior to the Commencement of the Project, Redeveloper will have sufficient unrestricted equity on hand and financing in place to complete the same.

(h) To the best of Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Redevelopment 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 pursuant to the terms of this Redevelopment Agreement.

(i) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(j) To the best of Redeveloper's knowledge and belief, after diligent inquiry, all information and statements included in any information submitted to the Borough and its agents, including but not limited to, McManimon, Scotland & Baumann, LLC, are true and correct in all respects. Redeveloper acknowledges that the facts and representations contained in the

information, submitted by Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(k) To the best of Redeveloper's knowledge and belief, after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Borough for any property situated in the Borough.

2.04. 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 3 COVENANTS AND RESTRICTIONS

3.01. Covenants and Restrictions. Redeveloper agrees to record the Declaration of Restrictions with the Monmouth County Clerk's Office concurrently with the Project Area Closing.

3.02. Description of Covenants. The following covenants and restrictions are imposed upon, and are intended to run with, the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided, and shall be recorded in substantially the form of the Declaration of Covenants and Restrictions annexed hereto as Exhibit C:

(a) Redeveloper shall construct the Project on the Project Area in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals.

(b) Except for Permitted Transfers, and subject to the terms hereof, prior to the issuance of a Certificate of Completion, the Redeveloper shall not effect a Transfer without the written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed.

(c) In connection with its use and occupancy of the Project, the Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Area is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, 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) Subject to and in accordance with the terms hereof, upon Completion of Construction, Redeveloper shall obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and use of such portion of the Project Area and/or Project shall only be used for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan.

(e) Subject to and in accordance with the terms hereof, Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense (as between the Borough and Redeveloper).

(f) Subject to and in accordance with the terms hereof, Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, and this Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, the Redeveloper shall not encumber, hypothecate or otherwise use the Project Area, or any part thereof, as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay any and all taxes, service charges or similar obligations when owed with respect to the Project Area and any other property owned by Redeveloper situated in the Borough.

3.03. Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.02 shall be covenants running with the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. All covenants in Section 3.02, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Borough and its successors and assigns, against Redeveloper, its successors and assigns, and any successor in interest to the Project Area and any party in possession or occupancy of the Project Area, from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. The agreements and covenants set forth in Section 3.02 shall cease and terminate upon the issuance of a Certificate of Completion, substantially in the form annexed hereto as Exhibit B, provided, however, that the covenants in Section 3.02(c) shall remain in effect without limitation as to time.

3.04. Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 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 shall 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 to or in favor of which such agreements and covenants relate.

3.05. Prohibition Against Transfers of Interests in Redeveloper.

(a) Redeveloper recognizes the importance of this redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement. The Borough considers that a change of Control in Redeveloper, or the transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes, a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Redevelopment Agreement with Redeveloper, and, in so doing, the Borough is relying on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder. As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Borough, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution.

(b) Consent to Permitted Transfers. The Borough hereby consents, without the necessity of further actions or approvals, to the following Transfers (each, a "Permitted Transfer"):

(i) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least thirty (30) days' prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee;

(ii) Transfers of easements or dedications of portions or interests in the Project Area as may be required for utilities for the Project, or otherwise as conditions of Governmental Approvals, including but not limited to any sanitary sewer easement required by the Planning Board Approvals;

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

(iv) a lease agreement to a third party tenant or end user of the Project, or a purchase agreement to a third party buyer of a sub-condominium unit in the Project with the end user thereof, or the undertaking of construction or fit-out of any portion of the Project with or by

a third party tenant, buyer, or end user (or related party of any of the foregoing) of any portion of the Project;

(v) a Transfer to an Affiliate of the Redeveloper, to one of the Existing Members, or to an entity controlled by one or more of the Existing Members;

(vi) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure;

(vii) Redeveloper's acquisition of fee title to the Project Area; or

(viii) any contract or agreement with respect to any of the foregoing.

(c) Approval of Transfer. Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 3.05, the Borough shall not unreasonably withhold, condition or delay its consent to such Transfer. The Borough shall not withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

3.06. Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough agrees to reasonably cooperate with the Redeveloper in obtaining Governmental Approvals for the Project. The Borough agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan (including any deviations or waivers required for the Concept Plan as described on Exhibit D hereto), this Agreement and Applicable Laws, and to execute and deliver any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 3.06(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any governmental authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. 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.

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

(c) The Borough shall not amend or cause the amendment of the Redevelopment Plan in a manner that materially, adversely affects Redeveloper or the Project during the term of this Agreement without the prior written consent of the Redeveloper.

(d) The Redeveloper has been duly designated as the exclusive redeveloper of the Project Area and shall have the exclusive right and obligation to redevelop the Project Area and

implement the Project in accordance with, and subject to, the terms and conditions of this Agreement and the Redevelopment Plan.

ARTICLE 4 PROJECT DETAILS

4.01. Timeline and Implementation of the Project. The Redeveloper shall design, finance, undertake, implement and construct the Project in accordance with this Agreement and the Redevelopment Plan and as set forth as follows:

(a) Project Timeline.

(i) Redeveloper shall make application to the Planning Board for preliminary and final site plan and subdivision approval for the Project no later than thirty (30) days after the Effective Date and shall diligently prosecute the same.

(ii) The Project Area Closing is anticipated to occur within one hundred and eighty (180) days after the Effective Date. Redeveloper shall diligently pursue the Project Area Closing and shall notify the Borough in writing of any extension of the date of the Project Area Closing, including the reason therefor. Notwithstanding the foregoing, if the Project Area Closing does not occur within two hundred and seventy (270) days of the Effective Date, then the Borough may terminate this Agreement.

(iii) Redeveloper shall pursue all Governmental Approvals required for the Commencement of Construction of the Project and shall obtain all Governmental Approvals for the Completion of Construction and use and occupancy of the Project. Redeveloper shall file all applications for Governmental Approvals within ninety (90) days of the Borough Planning Board's adoption of the resolution granting preliminary and final site plan and subdivision approval and shall diligently prosecute the same.

(iv) Redeveloper shall Commence Construction of the Project within ninety (90) days after the Project Area Closing or the procurement of all required Governmental Approvals relating thereto, whichever occurs later.

(v) Redeveloper shall use commercially reasonable efforts to achieve Completion of Construction on or before a date that is eighteen (18) months following Commencement of Construction.

(b) If, subject to the provisions of this Agreement, the Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project timeline set forth above, for any reason, the Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure or anticipated failure, (ii) the Redeveloper's proposed method for correcting such failure, (iii) the Redeveloper's proposal for revising the timeline, and (iv) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project timeline.

(c) In the event that Redeveloper does not obtain all necessary Governmental Approvals for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Borough. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 4.01(c) then except as expressly set forth herein to the contrary, this Agreement shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

4.02. Construction of the Project.

(a) Construction Hours. Construction practices and hours shall be in accordance with Borough Ordinances, which are available at the Borough Building Department or through the Borough Clerk.

(b) Maintenance. The Project Area will be cleaned on a regular basis by Redeveloper; provided, however, that Redeveloper agrees to clean the Project Area within twenty-four (24) hours of a specific, reasonable request by the Borough that Redeveloper do so or the close of the following Business Day, whichever is later. Should Redeveloper fail to comply with this obligation, the Borough will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project. 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.

(c) Pedestrian Access and Safety. The Borough acknowledges that for safety reasons, the sidewalks adjacent to the Project Area may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Borough Building Department plans and specifications providing for pedestrian safety at and across the Project Area as applicable. The Redeveloper shall keep the sidewalks abutting the Project Area clean and free of debris, ice and snow during the construction of the Project.

(d) Construction Parking. The Redeveloper shall make arrangements with the Borough Construction Official and the Borough Police Department for off-street parking for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Project Area. The Borough agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

(e) Preconstruction Meeting. There shall be a preconstruction meeting held at least seven (7) days prior to the Commencement of Construction of the Project, which meeting shall include the Borough Construction Official, the Borough Engineer, a representative from the Borough Police Department, a representative from the Borough Fire Department and representatives from the various applicable utility companies.

(f) 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.

(g) 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 4.

(h) 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.

(i) 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.

(j) 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.

4.03 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, or via electronic means. A 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 G).

(c) The Borough reserves 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 4.03(c) be deemed acceptance of the work or deemed to waive any right the Borough has under this Redevelopment 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 Redevelopment Agreement.

4.04. Certificates of Occupancy and Certificates of Completion.

(a) Upon the Completion of Construction of the Project or any portion thereof, Redeveloper shall apply to Borough Construction Code Official for a Certificate of Occupancy.

(b) Following the Completion of the Project, the Borough agrees to issue a Certificate of Completion upon receipt of a Completion Notice from Redeveloper. Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project in this Redevelopment Agreement and the Redevelopment Plan. Within thirty (30) days after receipt of a Completion Notice, the Borough shall provide Redeveloper with the Certificate of Completion or 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 or is otherwise in default hereunder.

4.05. Project Costs, Financing and Performance and Maintenance Guarantees.

(a) Redeveloper agrees that, as between the Borough and Redeveloper, the costs and financing for the Project are the sole responsibility of the Redeveloper, not the Borough. 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. 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 Project Area, the cost of designing and constructing all Improvements, all financing costs, all marketing and leasing costs for the Improvements, and the Borough 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) 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.

4.06. Environmental Obligations. The Parties hereby expressly acknowledge that the Borough has made no representation as to the environmental condition of any part of the Project Area. The Parties hereto further expressly acknowledge and agree that to the extent any portion of the Project Area requires Remediation, or causes any other property to require Remediation, the Borough shall have no responsibility therefor. The Parties hereto expressly agree and acknowledge that it shall be the sole responsibility of the Redeveloper to undertake and pay the cost of any and all Remediation, compliance, environmental testing, and/or other analyses for the Project Area, and that the Borough has no obligation or liability whatsoever with respect to the environmental condition of the Project Area, or any other parcels which may claim contamination arising from the Project Area. Redeveloper shall defend, protect, indemnify and hold harmless the Borough and its agents from any claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Project Area, including without limitation, claims against the Borough and its agents by any third party.

4.07. No Rights in Third-Party Beneficiaries. This Agreement does not and will not confer any rights, remedies or entitlements upon any third person or entity other than the Parties and their respective successors and assigns. This Agreement is for the exclusive benefit and convenience of the Parties hereto.

ARTICLE 5
EVENTS OF DEFAULT; TERMINATION

5.01. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Redevelopment Agreement:

(a) Redeveloper (i) fails to perform its obligations with respect to the Project Area Closing or the implementation of the Project in accordance with this Redevelopment Agreement, including but not limited to failure to Commence Construction or Complete Construction in accordance with this Redevelopment Agreement; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Borough.

(b) If at any time Redeveloper shall: (i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or (ii) make an assignment for the benefit of creditors; or (iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or state or other statute or law; or (v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of Redeveloper or of all or any substantial part of its property or of the Project Area or any interest of Redeveloper therein; or (vi) take any corporate action in furtherance of any action described in this subsection; or (vii) if at any time any proceeding against Redeveloper seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of Redeveloper of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of Redeveloper, or of all or any substantial part of its properties or of the Project Area or any interest of Redeveloper therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty-five (45) days after the expiration of any such stay;

(c) Redeveloper's failure to pay or delinquency in the payment of payments in lieu of taxes, real property taxes or assessments, which failure or delinquency is not cured within ten (10) days, and for which no Notice under this Agreement shall be required. Redeveloper's failure to make any other payment due to the Borough under this Agreement, which failure or delinquency is not cured within ten (10) days after Notice by the Borough;

(d) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Borough, which failure or delinquency is not cured within thirty (30) days after Notice by the Borough;

(e) Any Transfer (except for Permitted Transfers) without the approval (or deemed approval pursuant to Section 3.05(c)) of the Borough;

(f) Any other default or breach by Redeveloper or the Borough in the observance or performance of any covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified below, the continuance of such default or breach for a period of thirty (30) consecutive days after Notice from the non-defaulting Party specifying the nature of such default or breach and requesting that such default or breach be remedied; provided, however, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting Party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than one hundred (120) days after such Notice unless this Redevelopment Agreement specifically provides otherwise; or

(g) Construction Event of Default. Any of the following shall be a "Construction Event of Default":

(i) if Redeveloper fails to Commence Construction of the Project within the time frames specified in this Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure); or

(ii) if Redeveloper abandons the Project or substantially suspends construction on the Project after obtaining a Building Permit or Commencement of Construction relating thereto without the prior knowledge and consent of the Borough for more than ninety (90) consecutive days (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension under clauses (i) or (ii) shall not be cured, ended, or remedied within sixty (60) days after receipt by the Redeveloper of Notice of such failure, abandonment or suspension; provided, however, that if the failure, abandonment or suspension is one that cannot be completely cured within sixty (60) days after receipt of such Notice, it shall not be a Construction Event of Default as long as the Redeveloper has begun to take actions to correct the failure, abandonment or suspension upon its receipt of Notice thereof and is proceeding with due diligence to remedy the failure, abandonment or suspension as soon as reasonably practicable.

5.02. Remedies Upon Event of Default by the Redeveloper. Whenever any Event of Default by the Redeveloper shall have occurred, the Borough may, on written Notice to Redeveloper (after applicable Notice and cure periods shall have expired), terminate this Redevelopment Agreement and Redeveloper's designation as Redeveloper, and upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect, and neither Party shall have any further rights, liability and/or obligations hereunder, except with respect to those provisions which survive this Agreement. In addition, if Redeveloper fails to pay any Borough Costs in accordance with the requirements of this Agreement, the Borough may file legal action seeking payment of the Borough Costs.

5.03. Remedies Upon Event of Default by the Borough. If an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as Redeveloper may deem necessary or desirable to enforce the performance or observance of any rights or

remedies of Redeveloper, or any obligations, agreements, or covenants of the Borough under this Redevelopment Agreement, including an action for specific performance and/or actual, compensatory damages (but specifically excluding delay, reliance, consequential or punitive damages). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, on written Notice to the Borough (after applicable Notice and cure period shall have expired), to terminate this Redevelopment Agreement and, upon full payment of all Borough Costs accruing until the date of such termination and except as expressly provided for herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liabilities and/or obligations hereunder.

5.04. Force Majeure Extension. For the purposes of this Redevelopment Agreement, neither the Borough nor Redeveloper shall be considered in breach or in default with respect to their respective obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Borough or Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of the Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Borough or Redeveloper from declaring a default or the occurrence of an Event of Default by the other Party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

5.05. No Waiver. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party hereunder in asserting any of its rights or remedies as to any default by the other Party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Borough or the Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.06. Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

ARTICLE 6 PROJECT AREA CLOSING; ESCROW ACCOUNT

6.01. Project Area Closing. In the event that the Project Area Closing does not occur

within the timeframe set forth in Section 4.01 herein, Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Borough and, upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

6.02 Escrow Account to Cover Borough Costs.

(a) Concurrent with the execution of this Agreement, the Redeveloper has established with the Borough an escrow account (the "**Escrow Account**") having an initial balance of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to cover Borough Costs (the "**Escrow Deposit**"). Attached to this Agreement as Exhibit E is a description of the agreed upon procedure to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom, which is incorporated herein by reference.

(b) Also concurrent with the execution of this Agreement, the Redeveloper shall pay over to the Borough the amount of TWENTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$22,600.00) in order to defray professional costs previously incurred by the Borough in connection with the Project.

ARTICLE 7
FINANCING

7.01. Mortgage Financing.

(a) Neither Redeveloper nor any successor in interest to Redeveloper or the Project Area, or any part thereof, shall engage in any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Project Area, 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 Project Area, 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 3.05(b)(i) 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 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, except for a Permitted Transfer pursuant to Section 3.05(b) 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 Project Area, whether by voluntary act of Redeveloper or otherwise, upon obtaining actual knowledge or notice of same.

(b) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Mortgagee and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and

adversely alter or modify the rights and obligations of the Redeveloper or the Borough, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the 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 Mortgagee (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Borough under this Redevelopment Agreement.

7.02. Notice of Default to the Mortgagee and Right to Cure. Whenever the Borough shall deliver any Notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Mortgagee a copy of such Notice or demand; provided that the Redeveloper has delivered to the Borough a written Notice of the name and address of such Mortgagee. Each such Mortgagee (insofar as the rights of the Borough are concerned) has the right at its option within sixty (60) days after the receipt of such Notice (and the expiration of all applicable cure periods), 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. The Borough shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60-day period but has not completed such cure, then, not later than every sixty (60) days thereafter until such Event of Default is cured, Redeveloper shall inform the Borough that the Mortgagee is proceeding diligently to cure the Redeveloper Event of Default, and shall briefly describe the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Borough may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after Notice thereof. If possession of the Project or the Project Area is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Project or the Project Area.

7.03. No Guarantee of Construction or Completion by Mortgagee.

(a) A Mortgagee shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project, or to guarantee such construction or Completion thereof; nor shall any covenant or any other provisions be construed so as to obligate a Mortgagee. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or Completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security, including the improvements or construction already made) without the Mortgagee or Affiliate of Mortgagee first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough.

(b) If a Mortgagee forecloses its Mortgage secured by the Project (or portion thereof), or takes title (in its name or the name of an Affiliate) to the Project (or portion thereof) by deed-

in-lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project (or condominium unit thereof) to any Person, provided Mortgagee gives the Borough notice of such sale at least twenty (20) days prior to closing and provided such Person assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. The Mortgagee, or the entity assuming the obligations of the Redeveloper, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of any deadlines hereunder. Any such Mortgagee, or other entity assuming such obligations of the Redeveloper, upon completing the Project shall be entitled, upon written request made to the Borough, to a Certificate of Completion in accordance with the terms of this Agreement. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Mortgagee, or such other entity assuming such obligations of the Redeveloper, to devote any portion of the Project Area to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project in accordance herewith.

7.04. Estoppel Certificates. Within fourteen (14) days following written request therefor by a Party hereto (which request may be on behalf of any Mortgagee, purchaser, tenant or other party having an interest in the Project Area), the other Party shall issue a signed certificate ("Estoppel Certificate") stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no Event of Default under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in an Event of Default under this Redevelopment Agreement), or stating the nature of the Event of Default or other such event, if any, and (iii) any other matter reasonably requested. No more than three (3) Estoppel Certificates per year may be requested by each Party.

ARTICLE 8 INSURANCE

8.01. General Requirements. From and after the Effective Date, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Project 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.

8.02. Insurance Required.

(a) 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. 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 Project 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 Mortgagee), 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.

8.03. Other Insurance. To the extent required by any Project tenant, or that Redeveloper obtains financing for the Project and such lender or Mortgagee 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 8 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 9 MISCELLANEOUS

9.01. No Consideration for 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 Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

9.02. Non-Liability of Officials and Employees.

(a) 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 Redevelopment Agreement.

(b) No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

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

9.04. Recitals and Exhibits. The Recitals and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

9.05. Entire Agreement. This Redevelopment 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 hereof.

9.06. Severability. The validity of any Article and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

9.07. Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the Borough, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third-party claims, liabilities, losses, costs,

damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, provided, however, that no indemnification shall be required pursuant to this Section 9.07 in the event that the indemnification otherwise due pursuant to this Section 9.07 is attributable to the gross negligence or willful misconduct of the Borough, its governing body, or any agency of the Borough or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section shall survive termination of this Agreement.

9.08. Notices. A notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other ("Notice") shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Borough:

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

With a copy to:

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

As to the Redeveloper:

Hudson Pointe at Keyport, LLC
P.O. Box 66
Colts Neck, New Jersey 07722
Attn: [_____]

With a copy to:

Salvatore Alfieri, Esq.
Cleary, Giacobbe, Alfieri & Jacobs, LLC
95 State Route 34, Suite 200
Matawan, New Jersey 07747

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) days' Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any notice delivered by telecopy shall be deemed to have been received by such Party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any notice given by an attorney for a Party shall be effective for all purposes.

9.09. Further Assurances/Cooperation. The Parties shall cooperate with each other as reasonably necessary to effectuate the Project. From time to time at the request of either Redeveloper or the Borough, the other Party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Redevelopment Agreement.

9.10. Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Redevelopment Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Monmouth County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Monmouth County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum. The Parties further agree that any claims relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury.

9.11. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.

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.

ATTEST:

BOROUGH OF KEYPORT

Michele Clark, Borough Clerk

By: _____
Collette J. Kennedy, Mayor

WITNESS:

HUDSON POINTE AT KEYPORT, LLC

Name: SALVATORE ALFIERI
ATTORNEY AT LAW OF N.J.

By: _____
Name: John Kling
Title: Manager

EXHIBIT A
PROJECT AREA SURVEY AND METES & BOUNDS DESCRIPTION

[To be attached]

EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

Prepared by:

CERTIFICATE OF COMPLETION

[Date]

HUDSON POINTE AT KEYPORT, LLC
P.O. Box 66
Colts Neck, New Jersey 07722

Project: Hudson Pointe at Keyport
Location: Block 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52

In accordance with Section 3.03 of that certain Redevelopment Agreement entered into by the Borough of Keyport (the "**Borough**") and Hudson Pointe at Keyport, LLC (the "**Redeveloper**"), dated as of [], 2020 (the "**Agreement**"), this letter shall serve as acknowledgment that Redeveloper has performed all of its duties and obligations with respect to the Project (as such term is defined in the Agreement) under the Agreement and has completed construction of the Project in accordance with the requirements of the Agreement.

This Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the Redeveloper's obligations, responsibilities and covenants under the Agreement, except for Section 3.02(c), and the escrow procedures provided in Exhibit E thereof, which by the terms of the Agreement shall survive such termination and remain in effect for the time set forth therein. The conditions that were found and determined to exist with respect to the Project Area (as defined in the Agreement) at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist.

The Declaration of Covenants And Restrictions recorded in the Monmouth County Clerk's Office on [] in deed book [], page [] (the "**Declaration**") is hereby discharged of record and is void and of no further force and effect, except with respect to Section 2(C) of the Declaration, which remains in effect without limitation as to time.

Very truly yours,

BOROUGH OF KEYPORT

By: _____
Name:
Title:

EXHIBIT C

FORM OF DECLARATION OF COVENANTS

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 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52
in the Borough of Keyport,
County of Monmouth (the "Property")**

This Declaration of Covenants and Restrictions ("**Declaration**") is made this ____ day of _____, 2020 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

HUDSON POINTE AT KEYPORT, LLC, a limited liability company qualified to do business in the State of New Jersey, having an address at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, referred to as the "**Redeveloper**");

WITNESSETH:

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, in accordance with the LRHL, on February 20, 2007 the Borough Council of the Borough (the "**Borough Council**") adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, in accordance with the LRHL, on December 18, 2018 the Borough Council adopted Resolution No. 256-18 designating certain properties within the Borough as an area in need of redevelopment, including certain properties identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough (together with Block 130, Lot 52, the "**Properties**"); and

WHEREAS, the Borough Council 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 Borough Council duly adopted a resolution authorizing the execution of a redevelopment agreement with the Redeveloper dated _____, 20__ (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.

[Signatures appear on the following page]

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: _____
Collette J. Kennedy, Mayor

STATE OF NEW JERSEY)
) **SS.**
COUNTY OF MONMOUTH)

On this, the ____ day of _____, 2020, before me, personally appeared Collette J. Kennedy, who acknowledged herself to be the Mayor of the **BOROUGH OF KEYPORT**, and that she, as such municipal officer, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing her name on behalf of the aforesaid municipality.

Notary Public of the State of New Jersey

Form Signature Page to Exhibit C to Redevelopment Agreement

WITNESS:

HUDSON POINTE AT KEYPORT, LLC

Name:

By: _____

Name:

Authorized Signatory

STATE OF _____)
) SS.
COUNTY OF _____)

On this, the ____ day of _____, 2020, before me, personally appeared _____, who acknowledged him/herself to be the Manager of **HUDSON POINTE AT KEYPORT, LLC**, and that he/she, as such Manager, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing his/her name on behalf of the aforesaid entity.

Notary Public of the State of _____

EXHIBIT D
CONCEPT PLAN

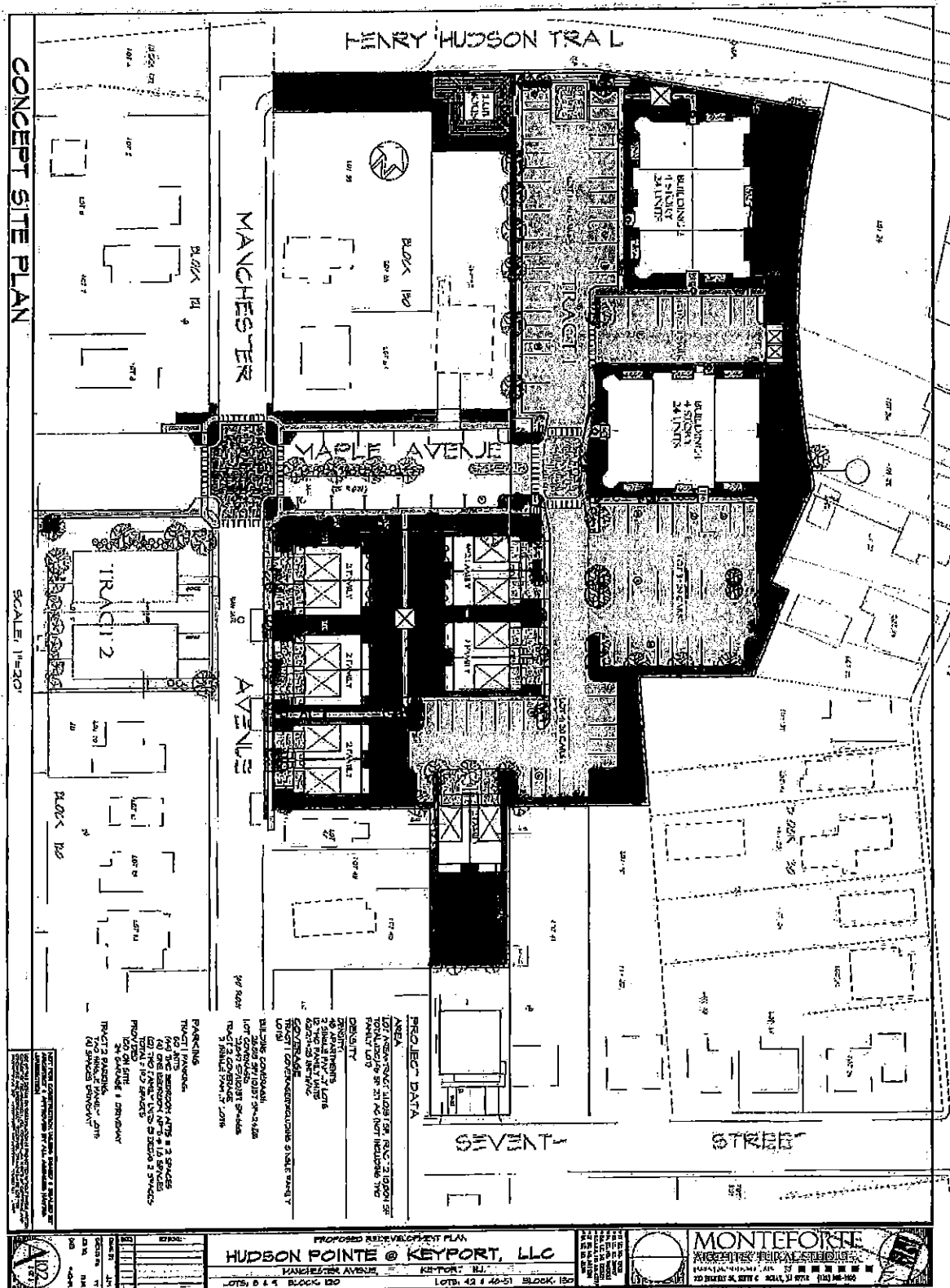


EXHIBIT E ESCROW PROCEDURES

1. Escrow Deposit. The Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Borough pursuant to the terms of the Redevelopment Agreement, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Borough, as "Escrowee," pursuant to the terms of this Agreement.

2. Deposit and Administration of Escrow Funds. The Escrow Deposit and all additions thereto shall be held by the Escrowee in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Agreement.

3. Payments from the Escrow Funds.

(a) The Escrowee shall use the Escrow Deposit and all additions thereto to pay Borough Costs in accordance with the provisions of the Redevelopment Agreement.

(b) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional or consultant, identifying the personnel performing services, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying the services performed. All professionals shall submit the required vouchers or statements to the Escrowee on a monthly basis in accordance with the schedule and procedures established by the Escrowee. The professionals or the Escrowee shall simultaneously send an informational copy of each voucher or statement submitted to the Escrowee to the Redeveloper; provided, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters. Annexed hereto as Schedule 1 is a schedule of rates to be charged by outside professionals and consultants retained by the Borough as of the date of this Agreement.

4. Accounting and Additional Deposits. Within three (3) business days after a written request by the Redeveloper is received by the Borough Attorney, the Escrowee shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account is less than SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00), the Escrowee shall provide the Redeveloper with a notice of the insufficient Escrow Account balance. Redeveloper shall deposit to the Escrow Account additional funds such that the total amount on deposit shall be not less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), such deposit to be made within five (5) business days after the Escrowee's notice, failing which the Escrowee may unilaterally cease work without liability to the Redeveloper.

5. Close Out Procedures. Upon the issuance of a Certificate of Completion or other termination of this Agreement, the Redeveloper shall send written Notice by certified mail to the

Escrowee requesting that the remaining balance of the Escrow Account be refunded, or otherwise applied in accordance with the provisions of this Agreement. After receipt of such notice, the professional(s) shall render a final bill to Escrowee within thirty (30) days, and shall send an informational copy simultaneously to the Redeveloper. Within thirty (30) days after receipt of the final bill the Escrowee shall pay all outstanding bills and render a written final accounting to the Redeveloper. The Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Escrowee in accordance with this section. This Section shall survive issuance of a Certificate of Completion or other termination of this Agreement.

6. Disputed Charges.

(a) The Redeveloper may dispute the propriety or reasonableness of Borough Costs paid out of the Escrow Account by written Notice to the Escrowee. A copy of such Notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written Notice of a disputed charge shall be given within thirty (30) days after the Redeveloper's receipt of the informational copy of the professional's voucher, invoice, statement or bill, except that if the professional has not supplied the Redeveloper with an informational copy of the voucher, invoice, statement or bill, then the Redeveloper shall send Notice within thirty (30) days after receipt of the first statement of activity against the Escrow Account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Redeveloper's acceptance of the charge and a waiver by the Redeveloper of all objections to the charge and to payment thereof out of the Escrow Account. The terms of this Section shall survive termination of this Agreement.

(b) If the Escrowee and the Redeveloper cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter, with a retired judge mutually agreeable to the parties acting as arbitrator. During the pendency of a dispute, the Escrowee shall not pay the disputed charges out of the escrow account, but may continue to pay undisputed charges out of the escrow account.

The terms of this exhibit shall survive termination of this Agreement.

[Schedule 1: Attach current rate schedule at execution.]

**EXHIBIT F
EXISTING MEMBERS**

Ownership Percentages of Hudson Pointe at Keyport, LLC

<u>ENTITY/INDIVIDUAL</u>	<u>CURRENT OWNERSHIP %</u>
John Kling	100%

**EXHIBIT G
FORM OF PROGRESS REPORT**

[*SUBMIT ON LETTERHEAD OF HUDSON POINTE AT KEYPORT, LLC*]

_____, 202__

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

**Re: Redevelopment Agreement dated _____, 2020 ("Agreement"),
 between the Borough of Keyport ("Borough") and Hudson Pointe at
 Keyport, 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,

Hudson Pointe at Keyport, LLC

By: _____
Name:

REDEVELOPMENT AGREEMENT

By and Between

THE BOROUGH OF KEYPORT,

as Redevelopment Entity

and

HUDSON POINTE AT KEYPORT, LLC

as Redeveloper

Dated: October ____, 2020

THIS REDEVELOPMENT AGREEMENT (this “**Redevelopment Agreement**” or this “**Agreement**”) is made as of September ____, 2020 by and between:

THE BOROUGH OF KEYPORT, a municipal corporation of the State of New Jersey, having its offices at 70 West Front Street, Keyport, New Jersey 07735, in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (the “**Borough**”);

AND

HUDSON POINTE AT KEYPORT, LLC, a limited liability company having its offices at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, the “**Redeveloper**”). The Borough and Redeveloper may herein be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (as amended, the “**Redevelopment Law**”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of rehabilitation or redevelopment; and

WHEREAS, pursuant to and in accordance with the Redevelopment Law, on February 20, 2007 the Borough Council of the Borough (the “**Council**”) adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, the Council, pursuant to and in accordance with the requirements of the Redevelopment Law, adopted Resolution # 256-18 on December 18, 2018 designating certain properties within the Borough as a condemnation area in need of redevelopment (the “**Redevelopment Area**”); and

WHEREAS, Redeveloper is the contract purchaser of a portion of the Redevelopment Area identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough and commonly known as 75 Manchester Avenue, and Block 130, Lot 52, commonly known as 1 Maple Place, all as more specifically set forth on the survey and metes and bounds description attached hereto as Exhibit A (the “**Project Area**”); and

WHEREAS, pursuant to the Redevelopment Law, on September 15, 2020, the Council adopted Ordinance 9-20 implementing a redevelopment plan for the Project Area entitled “Hudson Pointe Redevelopment Plan” (as may be amended and supplemented, the “**Redevelopment Plan**”); and

WHEREAS, Redeveloper proposes to develop, finance, construct and implement a project on the Project Area including: (i) a residential complex with forty-eight (48) units, which shall consist of no fewer than 4 one-bedroom and one-bathroom units, and no more than 44 two-bedroom and two-bathroom units; (ii) six (6) duplexes with each duplex containing two units with each unit having three bedrooms and 2.5 bathrooms; (iii) two (2) single family homes with 4 bedrooms and 2.5 bathrooms; (iv) one (1) two-family home; (v) a 3,500 square foot clubhouse;

(vi) a 1,200 square foot recreational area with a gazebo; (vii) 124 on-site parking spaces; and (viii) 11 parking spaces located on Maple Place to replace the industrial building currently located at 75 Manchester Avenue and a two-family home at the terminus of Maple Place as required or permitted by the Redevelopment Plan (collectively, the "Project"); and

WHEREAS, in order to effectuate the Redevelopment Plan, the Project, and the redevelopment of the Project Area, the Council desires to designate Redeveloper as the "redeveloper" of the Project Area and enter into this Redevelopment Agreement specifying the respective rights and responsibilities of the Parties with respect to the Project; and

WHEREAS, pursuant to Resolution [____], adopted on [____], the Council authorized the execution of this Redevelopment Agreement and the designation of Redeveloper as redeveloper of the Redevelopment Area.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree, each with the other, as follows:

ARTICLE 1 DEFINITIONS

1.01. Definitions. As used in this Redevelopment Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Redevelopment Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Redevelopment Agreement unless otherwise specified.

(a) The following terms shall have the definitions ascribed to them herein:

"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.

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

"Appeal Period" means the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

"Applicable Laws" means all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

"Bond" shall have the meaning set forth in Section 4.04(b).

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

"Borough Costs" means (i) all reasonable outside professional and consultant fees, out of pocket costs or expenses incurred by the Borough arising out of or in connection with the negotiation, preparation, performance, administration, or enforcement of the Redevelopment Plan, this Redevelopment Agreement, the Project, or any other agreement or instrument related thereto, including all planning, legal, engineering and/or financial advisor costs incurred prior to the Effective Date and from the Effective Date of this Redevelopment Agreement forward; (ii) litigation costs arising out of or in connection with a dispute with a third party with respect to this Redevelopment Agreement or the Project, or any agreement or instrument related thereto; and (iii) any other out of pocket fee, cost or expense reasonably incurred by the Borough, after the date of this Agreement, to satisfy its obligations under this Agreement or in furtherance of the Project, but shall not include any and all costs incurred in connection with Redeveloper's site plan application to the Planning Board and governed by the escrow deposited by Redeveloper in connection with such application in accordance with the MLUL.

"Building Permit" means a building permit issued by or on behalf of the Borough for construction of any portion of the Project, excluding demolition permits but including footings and foundation permits.

"Business Days" means all days except Saturdays, Sundays and the days observed as public holidays by the Borough.

"Certificate of Completion" means written acknowledgement by the Borough in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Redevelopment Agreement, substantially in the form annexed hereto as Exhibit B.

"Certificate of Occupancy" means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Borough and the applicable provisions of the Uniform Construction Code.

"Commencement," "Commence Construction," "Commencement of Construction," or "Commencement Date" means the undertaking of any actual physical construction of any portion of the Project, including demolition, site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure.

"Completion," "Completion of Construction," "Complete Construction," or "Completion Date" means the completion of construction of the Project in accordance with the Redevelopment Plan and this Redevelopment Agreement, including but not limited to work sufficient for issuance of a Certificate of Occupancy and subject only to installation of landscaping, if the delay in completion thereof is necessitated by seasonal concerns.

"Completion Notice" means written notification, provided by or on behalf of Redeveloper to the Borough, of Completion of Construction of the Project and request by Redeveloper for the issuance by the Borough of a Certificate of Completion.

"Concept Plan" means the architectural plans and drawings attached as Exhibit D.

"Construction Event of Default" shall have the meaning set forth in Section 5.01(f).

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

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

"County" means Monmouth County, New Jersey.

"Declaration of Covenants and Restrictions" or "Declaration of Restrictions" means a written instrument to be executed by Redeveloper and recorded in the Monmouth County Clerk's Office, substantially in the form annexed hereto as Exhibit C, intended to encumber the Project Area and to run with the Project Area until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article 3.

"Effective Date" means the date this Redevelopment Agreement is executed by the Borough and the Redeveloper.

"Environmental Laws" means all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11 et seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6 et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.); and the rules and regulations promulgated under any of the foregoing.

"Escrow Account" shall have the meaning set forth in Section 6.02(a).

"Escrow Deposit" shall have the meaning set forth in Section 6.02(a).

"Estoppel Certificate" shall have the meaning set forth in Section 8.12.

"Event of Default" shall have the meaning set forth in Section 5.01.

"Existing Members" means the Persons owning membership interests in the Redeveloper as of the date of this Agreement, which Persons are set forth in Exhibit F annexed hereto.

"Force Majeure Event" means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials; and severe economic, financial or market conditions affecting the region (and not unique to the Project) that inhibits the procurement of financing for the Project or that renders the development and marketing of the Project on the terms set forth in the Redevelopment Agreement economically infeasible (provided that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

"Foreclosure" shall have the meaning set forth in Section 7.03(b).

"Governmental Approvals" means all governmental approvals required for the Commencement of Construction, Completion of Construction, and use and occupancy of the Project, including, without limitation, the Planning Board Approvals, as defined below; County planning board approvals, if and to the extent required; Building Permits; environmental permits, approvals, consents or authorizations from NJDEP and any other applicable governmental agencies; sewerage capacity approvals, utilities-related permits and any and all other necessary governmental permits, licenses, consents and approvals.

"Improvements" means all improvements constructed as part of the Project.

"Institution" means any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employees' welfare, pension or retirement system or any corporation or entity subject to supervision and regulation by the insurance or banking departments of the State or of the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments, or any Affiliate of the foregoing.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Mortgage" means any security interest, evidenced by a written instrument, encumbering the Project Area, or any portion thereof, that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

"Mortgagee" means the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successors in interest.

"Notice" shall have the meaning set forth in Section 8.08.

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

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

"Permitted Transfers" shall have the meaning set forth in Section 3.05(b).

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

"Planning Board" means the Keyport Unified Planning Board.

"Planning Board Approvals" means preliminary and final site plan approval, with conditions, deviations and waivers, of the Concept Plans as described at Exhibit D attached hereto.

"Progress Report" shall have the meaning set forth in Section 4.03(b) and shall be submitted in the form attached hereto as Exhibit G attached hereto.

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

"Project Area" shall have the meaning set forth in the Recitals.

"Project Area Closing" means the acquisition of the Project Area by the Redeveloper, which shall take place as set forth in Section 4.01 herein.

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

"Redevelopment Area" shall have the meaning set forth in the Recitals.

"Redevelopment Entity" means the Borough acting in its capacity as a redevelopment entity pursuant to the Redevelopment Law and any permitted successors or assigns.

"Redevelopment Law" shall have the meaning set forth in the Recitals.

"Redevelopment Plan" shall have the meaning set forth in the Recitals.

"Remediate" or "Remediation" means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of hazardous substances, known or unknown, on, under, or migrating to or from the Project Area, in accordance with Applicable Law, environmental laws and Governmental Approvals.

"State" means the State of New Jersey.

"Transfer" means, prior to Completion of the Project, (i) a sale or re-conveyance of all or any portion of the Project Area or Project by Redeveloper to any other Person, (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of Redeveloper as it exists on the date of this Redevelopment Agreement, (iii) a transfer of ten percent (10%) or more of the membership interest in Redeveloper to a Person other than an Institution, or (iv) any assignment of this Redevelopment Agreement to any other Person.

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

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

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

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

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

(e) 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.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

2.01. Designation as Redeveloper. The Borough hereby designates and appoints the Redeveloper as redeveloper of the Project on the Project Area. For so long as this Redevelopment Agreement and the designation hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Project Area in accordance with the Redevelopment Plan, the Governmental Approvals, the Redevelopment Law and all other Applicable Laws, and the terms and conditions of this Redevelopment Agreement.

2.02. Representations and Warranties of the Borough. The Borough hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The Borough is a municipal corporation, duly organized and existing under the laws of the State, and as such, has the legal power, right and authority pursuant to the Redevelopment Law to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) The Borough has authorized the execution of this Redevelopment Agreement by resolution and has duly executed this Redevelopment Agreement.

(d) To the best of the Borough's knowledge, 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 Redevelopment Agreement.

(e) This Redevelopment Agreement has been 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 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.

(f) The Borough represents that, to the best of its knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which questions the validity of the Redevelopment Plan or this Redevelopment Agreement, or any action or act taken or to be taken by the Borough pursuant to the Redevelopment Plan or Redevelopment Agreement.

2.03. Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of the State and all necessary consents have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

(c) 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 the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the 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 the Redeveloper has been filed.

(e) No indictment has been returned against Redeveloper or any officer or shareholder of Redeveloper.

(f) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(g) Subject to obtaining construction financing, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project. Prior to the Commencement of the Project, Redeveloper will have sufficient unrestricted equity on hand and financing in place to complete the same.

(h) To the best of Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Redevelopment 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 pursuant to the terms of this Redevelopment Agreement.

(i) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(j) To the best of Redeveloper's knowledge and belief, after diligent inquiry, all information and statements included in any information submitted to the Borough and its agents, including but not limited to, McManimon, Scotland & Baumann, LLC, are true and correct in all respects. Redeveloper acknowledges that the facts and representations contained in the

information, submitted by Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(k) To the best of Redeveloper's knowledge and belief, after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Borough for any property situated in the Borough.

2.04. 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 3 COVENANTS AND RESTRICTIONS

3.01. Covenants and Restrictions. Redeveloper agrees to record the Declaration of Restrictions with the Monmouth County Clerk's Office concurrently with the Project Area Closing.

3.02. Description of Covenants. The following covenants and restrictions are imposed upon, and are intended to run with, the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided, and shall be recorded in substantially the form of the Declaration of Covenants and Restrictions annexed hereto as Exhibit C:

(a) Redeveloper shall construct the Project on the Project Area in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals.

(b) Except for Permitted Transfers, and subject to the terms hereof, prior to the issuance of a Certificate of Completion, the Redeveloper shall not effect a Transfer without the written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed.

(c) In connection with its use and occupancy of the Project, the Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Area is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, 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) Subject to and in accordance with the terms hereof, upon Completion of Construction, Redeveloper shall obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and use of such portion of the Project Area and/or Project shall only be used for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan.

(e) Subject to and in accordance with the terms hereof, Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense (as between the Borough and Redeveloper).

(f) Subject to and in accordance with the terms hereof, Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, and this Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, the Redeveloper shall not encumber, hypothecate or otherwise use the Project Area, or any part thereof, as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay any and all taxes, service charges or similar obligations when owed with respect to the Project Area and any other property owned by Redeveloper situated in the Borough.

3.03. Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.02 shall be covenants running with the Project Area from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. All covenants in Section 3.02, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Borough and its successors and assigns, against Redeveloper, its successors and assigns, and any successor in interest to the Project Area and any party in possession or occupancy of the Project Area, from and after the Project Area Closing until a Certificate of Completion has been issued for the Project, except as otherwise provided in this Section below. The agreements and covenants set forth in Section 3.02 shall cease and terminate upon the issuance of a Certificate of Completion, substantially in the form annexed hereto as Exhibit B, provided, however, that the covenants in Section 3.02(c) shall remain in effect without limitation as to time.

3.04. Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 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 shall 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 to or in favor of which such agreements and covenants relate.

3.05. Prohibition Against Transfers of Interests in Redeveloper.

(a) Redeveloper recognizes the importance of this redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement. The Borough considers that a change of Control in Redeveloper, or the transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes, a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Redevelopment Agreement with Redeveloper, and, in so doing, the Borough is relying on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder. As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Borough, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of ten percent (10%) or more of the ownership interest in Redeveloper to any Person other than an Institution.

(b) Consent to Permitted Transfers. The Borough hereby consents, without the necessity of further actions or approvals, to the following Transfers (each, a "Permitted Transfer"):

(i) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least thirty (30) days' prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee;

(ii) Transfers of easements or dedications of portions or interests in the Project Area as may be required for utilities for the Project, or otherwise as conditions of Governmental Approvals, including but not limited to any sanitary sewer easement required by the Planning Board Approvals;

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

(iv) a lease agreement to a third party tenant or end user of the Project, or a purchase agreement to a third party buyer of a sub-condominium unit in the Project with the end user thereof, or the undertaking of construction or fit-out of any portion of the Project with or by

a third party tenant, buyer, or end user (or related party of any of the foregoing) of any portion of the Project;

(v) a Transfer to an Affiliate of the Redeveloper, to one of the Existing Members, or to an entity controlled by one or more of the Existing Members;

(vi) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure;

(vii) Redeveloper's acquisition of fee title to the Project Area; or

(viii) any contract or agreement with respect to any of the foregoing.

(c) Approval of Transfer. Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 3.05, the Borough shall not unreasonably withhold, condition or delay its consent to such Transfer. The Borough shall not withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

3.06. Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough agrees to reasonably cooperate with the Redeveloper in obtaining Governmental Approvals for the Project. The Borough agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan (including any deviations or waivers required for the Concept Plan as described on Exhibit D hereto), this Agreement and Applicable Laws, and to execute and deliver any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 3.06(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any governmental authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. 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.

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

(c) The Borough shall not amend or cause the amendment of the Redevelopment Plan in a manner that materially, adversely affects Redeveloper or the Project during the term of this Agreement without the prior written consent of the Redeveloper.

(d) The Redeveloper has been duly designated as the exclusive redeveloper of the Project Area and shall have the exclusive right and obligation to redevelop the Project Area and

implement the Project in accordance with, and subject to, the terms and conditions of this Agreement and the Redevelopment Plan.

ARTICLE 4 PROJECT DETAILS

4.01. Timeline and Implementation of the Project. The Redeveloper shall design, finance, undertake, implement and construct the Project in accordance with this Agreement and the Redevelopment Plan and as set forth as follows:

(a) Project Timeline.

(i) Redeveloper shall make application to the Planning Board for preliminary and final site plan and subdivision approval for the Project no later than thirty (30) days after the Effective Date and shall diligently prosecute the same.

(ii) The Project Area Closing is anticipated to occur within one hundred and eighty (180) days after the Effective Date. Redeveloper shall diligently pursue the Project Area Closing and shall notify the Borough in writing of any extension of the date of the Project Area Closing, including the reason therefor. Notwithstanding the foregoing, if the Project Area Closing does not occur within two hundred and seventy (270) days of the Effective Date, then the Borough may terminate this Agreement.

(iii) Redeveloper shall pursue all Governmental Approvals required for the Commencement of Construction of the Project and shall obtain all Governmental Approvals for the Completion of Construction and use and occupancy of the Project. Redeveloper shall file all applications for Governmental Approvals within ninety (90) days of the Borough Planning Board's adoption of the resolution granting preliminary and final site plan and subdivision approval and shall diligently prosecute the same.

(iv) Redeveloper shall Commence Construction of the Project within ninety (90) days after the Project Area Closing or the procurement of all required Governmental Approvals relating thereto, whichever occurs later.

(v) Redeveloper shall use commercially reasonable efforts to achieve Completion of Construction on or before a date that is eighteen (18) months following Commencement of Construction.

(b) If, subject to the provisions of this Agreement, the Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project timeline set forth above, for any reason, the Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure or anticipated failure, (ii) the Redeveloper's proposed method for correcting such failure, (iii) the Redeveloper's proposal for revising the timeline, and (iv) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project timeline.

(c) In the event that Redeveloper does not obtain all necessary Governmental Approvals for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Borough. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 4.01(c) then except as expressly set forth herein to the contrary, this Agreement shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

4.02. Construction of the Project.

(a) Construction Hours. Construction practices and hours shall be in accordance with Borough Ordinances, which are available at the Borough Building Department or through the Borough Clerk.

(b) Maintenance. The Project Area will be cleaned on a regular basis by Redeveloper; provided, however, that Redeveloper agrees to clean the Project Area within twenty-four (24) hours of a specific, reasonable request by the Borough that Redeveloper do so or the close of the following Business Day, whichever is later. Should Redeveloper fail to comply with this obligation, the Borough will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project. 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.

(c) Pedestrian Access and Safety. The Borough acknowledges that for safety reasons, the sidewalks adjacent to the Project Area may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Borough Building Department plans and specifications providing for pedestrian safety at and across the Project Area as applicable. The Redeveloper shall keep the sidewalks abutting the Project Area clean and free of debris, ice and snow during the construction of the Project.

(d) Construction Parking. The Redeveloper shall make arrangements with the Borough Construction Official and the Borough Police Department for off-street parking for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Project Area. The Borough agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

(e) Preconstruction Meeting. There shall be a preconstruction meeting held at least seven (7) days prior to the Commencement of Construction of the Project, which meeting shall include the Borough Construction Official, the Borough Engineer, a representative from the Borough Police Department, a representative from the Borough Fire Department and representatives from the various applicable utility companies.

(f) 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.

(g) 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 4.

(h) 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.

(i) 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.

(j) 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.

4.03 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, or via electronic means. A 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 G).

(c) The Borough reserves 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 4.03(c) be deemed acceptance of the work or deemed to waive any right the Borough has under this Redevelopment 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 Redevelopment Agreement.

4.04. Certificates of Occupancy and Certificates of Completion.

(a) Upon the Completion of Construction of the Project or any portion thereof, Redeveloper shall apply to Borough Construction Code Official for a Certificate of Occupancy.

(b) Following the Completion of the Project, the Borough agrees to issue a Certificate of Completion upon receipt of a Completion Notice from Redeveloper. Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project in this Redevelopment Agreement and the Redevelopment Plan. Within thirty (30) days after receipt of a Completion Notice, the Borough shall provide Redeveloper with the Certificate of Completion or 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 or is otherwise in default hereunder.

4.05. Project Costs, Financing and Performance and Maintenance Guarantees.

(a) Redeveloper agrees that, as between the Borough and Redeveloper, the costs and financing for the Project are the sole responsibility of the Redeveloper, not the Borough. 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. 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 Project Area, the cost of designing and constructing all Improvements, all financing costs, all marketing and leasing costs for the Improvements, and the Borough 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) 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.

4.06. Environmental Obligations. The Parties hereby expressly acknowledge that the Borough has made no representation as to the environmental condition of any part of the Project Area. The Parties hereto further expressly acknowledge and agree that to the extent any portion of the Project Area requires Remediation, or causes any other property to require Remediation, the Borough shall have no responsibility therefor. The Parties hereto expressly agree and acknowledge that it shall be the sole responsibility of the Redeveloper to undertake and pay the cost of any and all Remediation, compliance, environmental testing, and/or other analyses for the Project Area, and that the Borough has no obligation or liability whatsoever with respect to the environmental condition of the Project Area, or any other parcels which may claim contamination arising from the Project Area. Redeveloper shall defend, protect, indemnify and hold harmless the Borough and its agents from any claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Project Area, including without limitation, claims against the Borough and its agents by any third party.

4.07. No Rights in Third-Party Beneficiaries. This Agreement does not and will not confer any rights, remedies or entitlements upon any third person or entity other than the Parties and their respective successors and assigns. This Agreement is for the exclusive benefit and convenience of the Parties hereto.

ARTICLE 5
EVENTS OF DEFAULT; TERMINATION

5.01. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Redevelopment Agreement:

(a) Redeveloper (i) fails to perform its obligations with respect to the Project Area Closing or the implementation of the Project in accordance with this Redevelopment Agreement, including but not limited to failure to Commence Construction or Complete Construction in accordance with this Redevelopment Agreement; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Borough.

(b) If at any time Redeveloper shall: (i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or (ii) make an assignment for the benefit of creditors; or (iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or state or other statute or law; or (v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of Redeveloper or of all or any substantial part of its property or of the Project Area or any interest of Redeveloper therein; or (vi) take any corporate action in furtherance of any action described in this subsection; or (vii) if at any time any proceeding against Redeveloper seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of Redeveloper of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of Redeveloper, or of all or any substantial part of its properties or of the Project Area or any interest of Redeveloper therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty-five (45) days after the expiration of any such stay;

(c) Redeveloper's failure to pay or delinquency in the payment of payments in lieu of taxes, real property taxes or assessments, which failure or delinquency is not cured within ten (10) days, and for which no Notice under this Agreement shall be required. Redeveloper's failure to make any other payment due to the Borough under this Agreement, which failure or delinquency is not cured within ten (10) days after Notice by the Borough;

(d) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Borough, which failure or delinquency is not cured within thirty (30) days after Notice by the Borough;

(e) Any Transfer (except for Permitted Transfers) without the approval (or deemed approval pursuant to Section 3.05(c)) of the Borough;

(f) Any other default or breach by Redeveloper or the Borough in the observance or performance of any covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified below, the continuance of such default or breach for a period of thirty (30) consecutive days after Notice from the non-defaulting Party specifying the nature of such default or breach and requesting that such default or breach be remedied; provided, however, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting Party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than one hundred (120) days after such Notice unless this Redevelopment Agreement specifically provides otherwise; or

(g) Construction Event of Default. Any of the following shall be a "Construction Event of Default":

(i) if Redeveloper fails to Commence Construction of the Project within the time frames specified in this Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure); or

(ii) if Redeveloper abandons the Project or substantially suspends construction on the Project after obtaining a Building Permit or Commencement of Construction relating thereto without the prior knowledge and consent of the Borough for more than ninety (90) consecutive days (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension under clauses (i) or (ii) shall not be cured, ended, or remedied within sixty (60) days after receipt by the Redeveloper of Notice of such failure, abandonment or suspension; provided, however, that if the failure, abandonment or suspension is one that cannot be completely cured within sixty (60) days after receipt of such Notice, it shall not be a Construction Event of Default as long as the Redeveloper has begun to take actions to correct the failure, abandonment or suspension upon its receipt of Notice thereof and is proceeding with due diligence to remedy the failure, abandonment or suspension as soon as reasonably practicable.

5.02. Remedies Upon Event of Default by the Redeveloper. Whenever any Event of Default by the Redeveloper shall have occurred, the Borough may, on written Notice to Redeveloper (after applicable Notice and cure periods shall have expired), terminate this Redevelopment Agreement and Redeveloper's designation as Redeveloper, and upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect, and neither Party shall have any further rights, liability and/or obligations hereunder, except with respect to those provisions which survive this Agreement. In addition, if Redeveloper fails to pay any Borough Costs in accordance with the requirements of this Agreement, the Borough may file legal action seeking payment of the Borough Costs.

5.03. Remedies Upon Event of Default by the Borough. If an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as Redeveloper may deem necessary or desirable to enforce the performance or observance of any rights or

remedies of Redeveloper, or any obligations, agreements, or covenants of the Borough under this Redevelopment Agreement, including an action for specific performance and/or actual, compensatory damages (but specifically excluding delay, reliance, consequential or punitive damages). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, on written Notice to the Borough (after applicable Notice and cure period shall have expired), to terminate this Redevelopment Agreement and, upon full payment of all Borough Costs accruing until the date of such termination and except as expressly provided for herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liabilities and/or obligations hereunder.

5.04. Force Majeure Extension. For the purposes of this Redevelopment Agreement, neither the Borough nor Redeveloper shall be considered in breach or in default with respect to their respective obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Borough or Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of the Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Borough or Redeveloper from declaring a default or the occurrence of an Event of Default by the other Party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

5.05. No Waiver. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party hereunder in asserting any of its rights or remedies as to any default by the other Party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Borough or the Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.06. Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

ARTICLE 6 PROJECT AREA CLOSING; ESCROW ACCOUNT

6.01. Project Area Closing. In the event that the Project Area Closing does not occur

within the timeframe set forth in Section 4.01 herein, Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Borough and, upon full payment of all Borough Costs accruing until the date of such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

6.02 Escrow Account to Cover Borough Costs.

(a) Concurrent with the execution of this Agreement, the Redeveloper has established with the Borough an escrow account (the "**Escrow Account**") having an initial balance of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to cover Borough Costs (the "**Escrow Deposit**"). Attached to this Agreement as Exhibit E is a description of the agreed upon procedure to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom, which is incorporated herein by reference.

(b) Also concurrent with the execution of this Agreement, the Redeveloper shall pay over to the Borough the amount of TWENTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$22,600.00) in order to defray professional costs previously incurred by the Borough in connection with the Project.

**ARTICLE 7
FINANCING**

7.01. Mortgage Financing.

(a) Neither Redeveloper nor any successor in interest to Redeveloper or the Project Area, or any part thereof, shall engage in any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Project Area, 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 Project Area, 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 3.05(b)(i) 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 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, except for a Permitted Transfer pursuant to Section 3.05(b) 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 Project Area, whether by voluntary act of Redeveloper or otherwise, upon obtaining actual knowledge or notice of same.

(b) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Mortgagee and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and

adversely alter or modify the rights and obligations of the Redeveloper or the Borough, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the 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 Mortgagee (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Borough under this Redevelopment Agreement.

7.02. Notice of Default to the Mortgagee and Right to Cure. Whenever the Borough shall deliver any Notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Mortgagee a copy of such Notice or demand; provided that the Redeveloper has delivered to the Borough a written Notice of the name and address of such Mortgagee. Each such Mortgagee (insofar as the rights of the Borough are concerned) has the right at its option within sixty (60) days after the receipt of such Notice (and the expiration of all applicable cure periods), 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. The Borough shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60-day period but has not completed such cure, then, not later than every sixty (60) days thereafter until such Event of Default is cured, Redeveloper shall inform the Borough that the Mortgagee is proceeding diligently to cure the Redeveloper Event of Default, and shall briefly describe the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Borough may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after Notice thereof. If possession of the Project or the Project Area is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Project or the Project Area.

7.03. No Guarantee of Construction or Completion by Mortgagee.

(a) A Mortgagee shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project, or to guarantee such construction or Completion thereof; nor shall any covenant or any other provisions be construed so as to obligate a Mortgagee. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or Completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security, including the improvements or construction already made) without the Mortgagee or Affiliate of Mortgagee first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough.

(b) If a Mortgagee forecloses its Mortgage secured by the Project (or portion thereof), or takes title (in its name or the name of an Affiliate) to the Project (or portion thereof) by deed-

in-lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project (or condominium unit thereof) to any Person, provided Mortgagee gives the Borough notice of such sale at least twenty (20) days prior to closing and provided such Person assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. The Mortgagee, or the entity assuming the obligations of the Redeveloper, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of any deadlines hereunder. Any such Mortgagee, or other entity assuming such obligations of the Redeveloper, upon completing the Project shall be entitled, upon written request made to the Borough, to a Certificate of Completion in accordance with the terms of this Agreement. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Mortgagee, or such other entity assuming such obligations of the Redeveloper, to devote any portion of the Project Area to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project in accordance herewith.

7.04. Estoppel Certificates. Within fourteen (14) days following written request therefor by a Party hereto (which request may be on behalf of any Mortgagee, purchaser, tenant or other party having an interest in the Project Area), the other Party shall issue a signed certificate ("**Estoppel Certificate**") stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no Event of Default under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in an Event of Default under this Redevelopment Agreement), or stating the nature of the Event of Default or other such event, if any, and (iii) any other matter reasonably requested. No more than three (3) Estoppel Certificates per year may be requested by each Party.

ARTICLE 8 INSURANCE

8.01. General Requirements. From and after the Effective Date, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Project 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.

8.02. Insurance Required.

(a) 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. 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 Project 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 Mortgagee), 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.

8.03. Other Insurance. To the extent required by any Project tenant, or that Redeveloper obtains financing for the Project and such lender or Mortgagee 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 8 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 9 MISCELLANEOUS

9.01. No Consideration for 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 Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

9.02. Non-Liability of Officials and Employees.

(a) 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 Redevelopment Agreement.

(b) No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

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

9.04. Recitals and Exhibits. The Recitals and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

9.05. Entire Agreement. This Redevelopment 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 hereof.

9.06. Severability. The validity of any Article and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

9.07. Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the Borough, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third-party claims, liabilities, losses, costs,

damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, provided, however, that no indemnification shall be required pursuant to this Section 9.07 in the event that the indemnification otherwise due pursuant to this Section 9.07 is attributable to the gross negligence or willful misconduct of the Borough, its governing body, or any agency of the Borough or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section shall survive termination of this Agreement.

9.08. Notices. A notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other ("Notice") shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Borough:

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

With a copy to:

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

As to the Redeveloper:

Hudson Pointe at Keyport, LLC
P.O. Box 66
Colts Neck, New Jersey 07722
Attn: []

With a copy to:

Salvatore Alfieri, Esq.
Cleary, Jacobbe, Alfieri & Jacobs, LLC
95 State Route 34, Suite 200
Matawan, New Jersey 07747

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) days' Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any notice delivered by telecopy shall be deemed to have been received by such Party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any notice given by an attorney for a Party shall be effective for all purposes.

9.09. Further Assurances/Cooperation. The Parties shall cooperate with each other as reasonably necessary to effectuate the Project. From time to time at the request of either Redeveloper or the Borough, the other Party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Redevelopment Agreement.

9.10. Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Redevelopment Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Monmouth County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Monmouth County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum. The Parties further agree that any claims relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury.

9.11. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.

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.

ATTEST:

BOROUGH OF KEYPORT

Michele Clark, Borough Clerk

By: _____
Collette J. Kennedy, Mayor

WITNESS:

Name: SALVATORE ALFIERI
ATTORNEY AT LAW OF N.J.

HUDSON POINTE AT KEYPORT, LLC

By: _____
Name: John Kling
Title: Manager

EXHIBIT A
PROJECT AREA SURVEY AND METES & BOUNDS DESCRIPTION

[To be attached]

EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

Prepared by: _____

CERTIFICATE OF COMPLETION

[Date]

HUDSON POINTE AT KEYPORT, LLC
P.O. Box 66
Colts Neck, New Jersey 07722

Project: Hudson Pointe at Keyport
Location: Block 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52

In accordance with Section 3.03 of that certain Redevelopment Agreement entered into by the Borough of Keyport (the "**Borough**") and Hudson Pointe at Keyport, LLC (the "**Redeveloper**"), dated as of [], 2020 (the "**Agreement**"), this letter shall serve as acknowledgment that Redeveloper has performed all of its duties and obligations with respect to the Project (as such term is defined in the Agreement) under the Agreement and has completed construction of the Project in accordance with the requirements of the Agreement.

This Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the Redeveloper's obligations, responsibilities and covenants under the Agreement, except for Section 3.02(c), and the escrow procedures provided in Exhibit E thereof, which by the terms of the Agreement shall survive such termination and remain in effect for the time set forth therein. The conditions that were found and determined to exist with respect to the Project Area (as defined in the Agreement) at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist.

The Declaration of Covenants And Restrictions recorded in the Monmouth County Clerk's Office on [] in deed book [], page [] (the "**Declaration**") is hereby discharged of record and is void and of no further force and effect, except with respect to Section 2(C) of the Declaration, which remains in effect without limitation as to time.

Very truly yours,

BOROUGH OF KEYPORT

By: _____
Name:
Title:

EXHIBIT C

FORM OF DECLARATION OF COVENANTS

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 120, Lots 8 and 9; Block 130, Lots 42, 48, 49, 50, 51 and 52
in the Borough of Keyport,
County of Monmouth (the "Property")

This Declaration of Covenants and Restrictions ("**Declaration**") is made this ____ day of _____, 2020 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

HUDSON POINTE AT KEYPORT, LLC, a limited liability company qualified to do business in the State of New Jersey, having an address at P.O. Box 66, Colts Neck, New Jersey 07722 (together with permitted successors or assigns as hereinafter provided, referred to as the "**Redeveloper**");

WITNESSETH:

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, in accordance with the LRHL, on February 20, 2007 the Borough Council of the Borough (the "**Borough Council**") adopted Resolution No. 105-07 designating the entire Borough as an area in need of rehabilitation; and

WHEREAS, in accordance with the LRHL, on December 18, 2018 the Borough Council adopted Resolution No. 256-18 designating certain properties within the Borough as an area in need of redevelopment, including certain properties identified as Block 120, Lots 8 and 9 and Block 130, Lots 42, 48, 49, 50 and 51 on the tax maps of the Borough (together with Block 130, Lot 52, the "**Properties**"); and

WHEREAS, the Borough Council 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 Borough Council duly adopted a resolution authorizing the execution of a redevelopment agreement with the Redeveloper dated _____, 20__ (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.

[Signatures appear on the following page]

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: _____
Collette J. Kennedy, Mayor

STATE OF NEW JERSEY)
) **SS.**
COUNTY OF MONMOUTH)

On this, the ____ day of _____, 2020, before me, personally appeared Collette J. Kennedy, who acknowledged herself to be the Mayor of the **BOROUGH OF KEYPORT**, and that she, as such municipal officer, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing her name on behalf of the aforesaid municipality.

Notary Public of the State of New Jersey

Form Signature Page to Exhibit C to Redevelopment Agreement

WITNESS:

HUDSON POINTE AT KEYPORT, LLC

Name: _____

By:

Name:

Authorized Signatory

STATE OF _____)
) SS.
COUNTY OF _____)

On this, the ____ day of _____, 2020, before me, personally appeared _____, who acknowledged him/herself to be the Manager of **HUDSON POINTE AT KEYPORT, LLC**, and that he/she, as such Manager, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing his/her name on behalf of the aforesaid entity.

Notary Public of the State of _____

EXHIBIT D
CONCEPT PLAN

EXHIBIT E
ESCROW PROCEDURES

1. Escrow Deposit. The Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Borough pursuant to the terms of the Redevelopment Agreement, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Borough, as "Escrowee," pursuant to the terms of this Agreement.

2. Deposit and Administration of Escrow Funds. The Escrow Deposit and all additions thereto shall be held by the Escrowee in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Agreement.

3. Payments from the Escrow Funds.

(a) The Escrowee shall use the Escrow Deposit and all additions thereto to pay Borough Costs in accordance with the provisions of the Redevelopment Agreement.

(b) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional or consultant, identifying the personnel performing services, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying the services performed. All professionals shall submit the required vouchers or statements to the Escrowee on a monthly basis in accordance with the schedule and procedures established by the Escrowee. The professionals or the Escrowee shall simultaneously send an informational copy of each voucher or statement submitted to the Escrowee to the Redeveloper; provided, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters. Annexed hereto as Schedule 1 is a schedule of rates to be charged by outside professionals and consultants retained by the Borough as of the date of this Agreement.

4. Accounting and Additional Deposits. Within three (3) business days after a written request by the Redeveloper is received by the Borough Attorney, the Escrowee shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account is less than SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00), the Escrowee shall provide the Redeveloper with a notice of the insufficient Escrow Account balance. Redeveloper shall deposit to the Escrow Account additional funds such that the total amount on deposit shall be not less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), such deposit to be made within five (5) business days after the Escrowee's notice, failing which the Escrowee may unilaterally cease work without liability to the Redeveloper.

5. Close Out Procedures. Upon the issuance of a Certificate of Completion or other termination of this Agreement, the Redeveloper shall send written Notice by certified mail to the

Escrowee requesting that the remaining balance of the Escrow Account be refunded, or otherwise applied in accordance with the provisions of this Agreement. After receipt of such notice, the professional(s) shall render a final bill to Escrowee within thirty (30) days, and shall send an informational copy simultaneously to the Redeveloper. Within thirty (30) days after receipt of the final bill the Escrowee shall pay all outstanding bills and render a written final accounting to the Redeveloper. The Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Escrowee in accordance with this section. This Section shall survive issuance of a Certificate of Completion or other termination of this Agreement.

6. Disputed Charges.

(a) The Redeveloper may dispute the propriety or reasonableness of Borough Costs paid out of the Escrow Account by written Notice to the Escrowee. A copy of such Notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written Notice of a disputed charge shall be given within thirty (30) days after the Redeveloper's receipt of the informational copy of the professional's voucher, invoice, statement or bill, except that if the professional has not supplied the Redeveloper with an informational copy of the voucher, invoice, statement or bill, then the Redeveloper shall send Notice within thirty (30) days after receipt of the first statement of activity against the Escrow Account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Redeveloper's acceptance of the charge and a waiver by the Redeveloper of all objections to the charge and to payment thereof out of the Escrow Account. The terms of this Section shall survive termination of this Agreement.

(b) If the Escrowee and the Redeveloper cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter, with a retired judge mutually agreeable to the parties acting as arbitrator. During the pendency of a dispute, the Escrowee shall not pay the disputed charges out of the escrow account, but may continue to pay undisputed charges out of the escrow account.

The terms of this exhibit shall survive termination of this Agreement.

[Schedule 1: Attach current rate schedule at execution.]

**EXHIBIT F
EXISTING MEMBERS**

Ownership Percentages of Hudson Pointe at Keyport, LLC

<u>ENTITY/INDIVIDUAL</u>	<u>CURRENT OWNERSHIP %</u>
John Kling	100%

**EXHIBIT G
FORM OF PROGRESS REPORT**

[*SUBMIT ON LETTERHEAD OF HUDSON POINTE AT KEYPORT, LLC*]

_____, 202_

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

**Re: Redevelopment Agreement dated _____, 2020 ("Agreement"),
 between the Borough of Keyport ("Borough") and Hudson Pointe at
 Keyport, 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,

Hudson Pointe at Keyport, LLC

By: _____
Name: